

## SUBCHAPTER A—ORGANIZATION AND PROCEDURES

### PART 1—PERFORMANCE OF FUNCTIONS UNDER THIS CHAPTER

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AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; (5 U.S.C. 8145, 8149); Secretary of Labor's Order No. 13-71, 36 FR 8155; Employment Standards Order No. 2-74, 39 FR 34722.

SOURCE: 40 FR 6876, Feb. 14, 1975, unless otherwise noted.

#### §1.1 Establishment of the Office of Workers' Compensation Programs.

The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order No. 13-71, 36 FR 8755, established in the Employment Standards Administration (ESA) an Office of Workers' Compensation Programs (OWCP) by Employment Standards Order No. 2-74, 39 FR 34722. The Assistant Secretary has further designated as the head thereof a Director who, under the general supervision of the Assistant Secretary, shall administer the programs assigned to that Office by the Assistant Secretary.

#### §1.2 Assignment of functions.

By Employment Standards Order No. 2-74, 39 FR 34722, the Assistant Secretary has delegated authority and assigned responsibility to the Director, OWCP, for the Department of Labor's programs under the following statutes:

- (a) Federal Employees' Compensation Act (FECA), (5 U.S.C. 8101 et seq.), except 8149 as it applies to the Employees' Compensation Appeals Board.
- (b) War Hazards Compensation Act (WHCA), (42 U.S.C. 1701 et seq.).
- (c) War Claims Act (WCA), (50 U.S.C. App. 2003).
- (d) Longshoremen's and Harbor Workers' Compensation Act (LHWCA),

(33 U.S.C. 901 et seq.), except 921 as it applies to the Benefits Review Board.

(e) District of Columbia Workmen's Compensation Act (DCWCA) (36 D.C. Code 501 et seq.).

(f) Defense Base Act (DBA) (42 U.S.C. 1651 et seq.).

(g) Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331).

(h) Nonappropriated Fund Instrumentalities Act (NFIA) (5 U.S.C. 8171 et seq.).

(i) Title IV of the Federal Coal Mine Health and Safety Act (FCMHSA), 83 Stat. 742, as amended by the Black Lung Benefits Act of 1972 (BLBA) (30 U.S.C. 901 et seq.).

#### §1.3 Rules in this chapter.

The rules in this chapter are those governing the OWCP functions under the Federal Employees' Compensation Act, the War Hazards Compensation Act, and the War Claims Act.

#### §1.4 Cross-references.

(a) The rules of the OWCP governing its functions under the Longshoremen's and Harbor Workers' Compensation Act and its extensions, the District of Columbia Workmen's Compensation Act, Defense Base Act, Outer Continental Shelf Lands Act, and Nonappropriated Fund Instrumentalities Act are set forth in subchapter A of chapter VI of this title.

(b) The rules of the OWCP governing its functions under the Black Lung Benefits Act program are set forth in subchapter B of chapter VI of this title.

(c) The rules and regulations of the Employees' Compensation Appeals Board are set forth in chapter IV of this title.

(d) The rules and regulations of the Benefits Review Board are set forth in chapter VII of this title.

#### §1.5 Abolition of Bureau of Employees' Compensation.

By Secretary of Labor's Order issued September 23, 1974, 39 FR 34723, issued concurrently with Employment Standards Order 2-74, 39 FR 34722, the Secretary revoked the prior Secretary's Order No. 18-67, 32 FR 12979, which had

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delegated authority and assigned responsibility for the various workers' compensation programs enumerated in § 1.2, except the Black Lung Benefits Act program not then in existence, to the Director of the former Bureau of Employees' Compensation.

### **§ 1.6 Historical background.**

(a) Administration of the Federal Employees' Compensation Act and the Longshoremen's and Harbor Workers' Compensation Act was initially vested in an independent establishment known as the U.S. Employees' Compensation Commission. By Reorganization Plan No. 2 of 1946 (3 CFR 1943–1949 Comp., p. 1064; 60 Stat. 1095, effective July 16, 1946), the Commission was abolished and its functions were transferred to the Federal Security Agency to be performed by a newly created Bureau of Employees' Compensation within such Agency. By Reorganization Plan No. 19 of 1950 (15 FR 3178, 64 Stat.

1263) said Bureau was transferred to the Department of Labor, and the authority formerly vested in the Administrator, Federal Security Agency, was vested in the Secretary of Labor. By Reorganization Plan No. 6 of 1950 (15 FR 3174, 64 Stat. 1263), the Secretary of Labor was authorized to make from time to time such provisions as he shall deem appropriate, authorizing the performance of any of his functions by any other officer, agency, or employee of the Department of Labor.

(b) In 1972 two separate organizational units were established within the Bureau: an Office of Workmen's Compensation Programs (37 FR 20533) and an Office of Federal Employees' Compensation (37 FR 22979). In 1974 these two units were abolished and one organizational unit, the Office of Workers' Compensation Programs (OWCP), was established in lieu of the Bureau of Employees' Compensation (39 FR 34722).

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AUTHORITY: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8149; Secretary's Order 1-93, 58 FR 21190.

SOURCE: 40 FR 6877, Feb. 14, 1975, unless otherwise noted.

## Subpart A—General Provisions

### INTRODUCTION

#### § 10.1 Statutory provisions.

(a) The Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*) provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. The Act has been amended and extended a number of times to provide workers' compensation benefits to volunteers in the Civil Air Patrol (5 U.S.C. 8141), members of the Reserve Officer Training Corps (5 U.S.C. 8140), Peace Corps Volunteers (5 U.S.C. 8142), Job Corps enrollees and Volunteers In Service to America (5 U.S.C. 8143), members of the National Teachers Corps (5 U.S.C. 8143a), certain student employees (see 5 U.S.C. 5351, 8144), employees of the Panama Canal Commission and certain employees of

the Alaska Railroad (see 5 U.S.C. 8146), certain law enforcement officers not employed by the United States (see 5 U.S.C. 8191-8193), and various other classes of persons who provide or have provided services to the Government of the United States.

(b) The Act provides for the payment of compensation for wage loss and for permanent impairment of specified members and functions of the body incurred by employees as a result of an injury sustained while in the performance of their duties in service to the United States. In addition to monetary compensation, eligible employees are entitled to receive, at reasonable expense to the United States, medical and related services made necessary by the medical condition or conditions accepted as being employment related. In appropriate cases, vocational rehabilitation services shall be provided to eligible beneficiaries.

(c) The Act also provides for the payment of monetary compensation to specified survivors of an employee whose death is the result of an employment-related injury and for payment of certain burial expenses subject to the provisions of 5 U.S.C. 8134.

(d) Each of the types of benefits and conditions of eligibility enumerated in this section is subject to the applicable provisions of the Act and the provisions of this part. This section shall not be construed to modify or enlarge upon the provisions of the Act.

[52 FR 10503, Apr. 1, 1987]

#### § 10.2 Administration of the Act and this chapter.

(a) Pursuant to 5 U.S.C. 8145 and Secretary of Labor's Orders 13-71 (36 FR 8755) and 16-73 (38 FR 19130) the responsibility for administering the provisions of the Act were delegated to the Assistant Secretary of Labor for Employment Standards. Pursuant to Employment Standards Order 2-74 effective September 27, 1974 (39 FR 34722-34723), the responsibility for the administration and implementation of the Federal Employees' Compensation Act, except for 5 U.S.C. 8149 thereof as it pertains to the Employees' Compensation Appeals Board, was delegated and assigned to the Director, Office of Workers' Compensation Programs. The

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Director, Office of Workers' Compensation Programs and his or her designees shall, therefore, except as is otherwise provided by law have the exclusive authority for the administration, implementation, and enforcement of the provisions of this chapter.

(b) In the case of employees of the Panama Canal Commission, the Federal Employees' Compensation Act is administered by the Panama Canal Commission and inquiries pertaining to such coverage should be directed to that Commission.

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10503, Apr. 1, 1987]

#### § 10.3 Purpose and scope of this part.

(a) This part 10 sets forth the rules applicable to the filing, processing, and payment of claims for workers' compensation benefits under the provisions of the Federal Employees' Compensation Act, as amended. This part is applicable to all claims filed on or after November 6, 1974. The provisions of this part are intended to afford guidance and assistance to any person seeking compensation benefits under the Act, as well as to personnel within the Department of Labor and other agencies of the United States who are required to perform some function with respect to the administration of any provision of the Act or the processing of any claim filed under the Act.

(b) This subpart A describes generally the statutory and administrative framework governing the manner in which claims under the Act shall be processed, contains a statement of purpose and scope, together with provisions pertaining to definition and use of terms, the disclosure of program information, and other miscellaneous provisions relating to the administration of the Act.

(c) Subpart B of this part describes the procedure by which an individual claimant shall file a notice of injury and claim for benefits under the Act and further describes the administrative procedures applicable to the processing of each individual claim and the rules governing the termination and continuation of eligibility for benefits with respect to certain previously approved claims.

(d) Subpart C of this part describes special procedures applicable to the continuation of pay provisions contained in 5 U.S.C. 8118 as amended by Pub. L. 93-416, 88 Stat. 1146.

(e) Subpart D of this part contains provisions relating to the procedures governing the payment of dollar benefits for disability or death and further contains additions to the compensation schedule mandated by the new paragraph 22 of 5 U.S.C. 8107(c), Pub. L. 93-416, 88 Stat. 1145.

(f) Subpart E of this part contains the rules governing an employee's rights to obtain medical evidence in support of such employee's claim and further contains information describing the rights of a beneficiary to medical benefits under the Act.

(g) Subpart F of this part is reserved.

(h) Subpart G of this part contains the rules governing the adjustment and recovery from a third person under 5 U.S.C. 8132.

(i) Subpart H of this part contains rules for particular groups of employees whose status requires special application of the provisions of the Act.

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10503, Apr. 1, 1987]

#### § 10.4 Applicability of other parts within this chapter.

This revised part 10 is applicable to part 25 of this chapter except as modified by part 25.

[52 FR 10503, Apr. 1, 1987]

#### § 10.5 Definitions and use of terms.

(a) *Definitions.* For purposes of this subchapter except where the content clearly indicates otherwise, the following definitions apply:

(1) *The Act* means the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.*, as amended by Pub. L. 93-416 and as it may be hereafter amended.

(2) *Secretary* means the Secretary of the U.S. Department of Labor or a person authorized to perform his functions under the Act.

(3) *Department* means the U.S. Department of Labor.

(4) *Office* or *OWCP* means the Office of Workers Compensation Programs,

Employment Standards Administration, of the Department.

(5) *Director* means the Director of OWCP or a person designated by him or her to carry out his or her functions under the Act.

(6) *Benefits or Compensation* means the money paid or payable under the Act to the employee on account of loss of wages or loss of wage-earning capacity and to enumerated survivors on account of the employee's death, and includes any other benefits paid for from the Employee's Compensation Fund such as scheduled compensation under 5 U.S.C. 8107, medical diagnostic and treatment services supplied pursuant to the Act and this part, vocational rehabilitation services, additional money for services of an attendant or for vocational rehabilitation under 5 U.S.C. 8111, and funeral expenses under 5 U.S.C. 8134, but does not include continuation of pay as provided by 5 U.S.C. 8118.

(7) *Claim* means an assertion in writing of an individual's entitlement to benefits under or pursuant to the Act, submitted in a form and manner authorized by the provisions of this part.

(8) *Claimant* means an individual whose claim for entitlement to benefits under the Act has been filed in accordance with the Act and the provisions of this part.

(9) *Beneficiary* means an individual who is entitled to a benefit under the Act and this part.

(10) *Entitlement* means entitlement to benefits as determined pursuant to the provisions of the Act and the procedures set forth in this part. A beneficiary is entitled to benefits as so determined when the determination is final.

(11) *Employee* means:

(i) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(ii) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(iii) An individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(iv) An individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(v) An individual selected pursuant to chapter 121 of title 28 U.S. Code, and serving as a petit or grand juror;

(vi) Members of the Reserve Officers Training Corps;

(vii) Civil Air Patrol Volunteers;

(viii) Peace Corps Volunteers and volunteer leaders;

(ix) Job Corps enrollees;

(x) Youth Conservation Corps enrollees;

(xi) Volunteers in Service to America;

(xii) Members of the National Teachers Corps;

(xiii) Members of the Neighborhood Youth Corps;

(xiv) Student employees as defined in 5 U.S.C. 5351;

(xv) Employees of the Panama Canal Commission;

(xvi) Certain employees of the Alaska Railroad;

(xvii) Law enforcement officers not employees of the United States and Federal law enforcement officers who are pensioned or pensionable under sections 521-535 of title 4, District of Columbia Code;

(xviii) An individual covered under the provisions of section 105(e)(1) of Pub. L. 93-638 (Indian Self-Determination and Education Assistance Act of 1975); and,

(xix) Other persons performing service for the United States within the purview of the Act and all acts in amendment, substitution or extension thereof;

(xx) But does not include:

(A) A commissioned officer of the Regular Corps of the Public Health Service;

(B) A commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(C) A commissioned officer of the National Oceanic and Atmospheric Administration.

(12) *Official superior* means officers and employees having responsibility for the supervision, direction or control of employees, or other employees of the agency designated by the employing agency to carry out the responsibilities vested in the agency under the Act and this subpart.

(13) *Employing agency* or *agency* means any civil agency or instrumentality of the U.S. Government or any other organization, group or institution employing any individual defined as an “employee” by this section.

(14) *Injury* means a wound or condition of the body induced by accident or trauma, and includes a disease or illness proximately caused by the employment for which benefits are provided under the Act. The term “injury” includes damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired; except that eyeglasses and hearing aids shall not be replaced, repaired, or otherwise compensated for, unless the damage or destruction is incident to a personal injury requiring medical services.

(15) *Traumatic injury* means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single work day or work shift.

(16) *Occupational disease or illness* means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates, or radiation, or other continued or repeated conditions or factors of the work environment.

(17) *Disability* means the incapacity, because of employment injury, to earn the wages the employee was receiving at the time of injury.

(18) *Temporary aggravation* means that factors of employment have directly caused an underlying or pre-existing condition, disease or illness to be more severe for a definite limited period of time and thereafter leaves no greater impairment than existed prior to the employment injury.

(19) *Impairment* means any anatomic or functional abnormality or loss. A permanent impairment is any such abnormality or loss after maximum medical improvement has been achieved.

(20) *Pay rate for compensation purposes* means the employee’s pay, as determined under section 8114 of the Act, at the time of injury, or at the time disability begins, or at the time compensable disability recurs if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except as otherwise determined under section 8113 of the Act with respect to any period.

(21) *Organ* means a part of the body that performs a special function, and for purposes of this part excludes the brain, heart and back.

(22) *United States Medical Officers and Hospitals* includes medical officers and hospitals of the Army, Navy, Air Force, Veterans Administration, and U.S. Public Health Service, and any other medical officers or hospitals designated as a U.S. medical officer or hospital by the Secretary.

(23) *Representative* means a person authorized by a claimant in writing to act for the claimant in connection with a claim or proceeding under the Act or this part. Where a claimant is physically or mentally incapable of making such a designation, it may be made by the claimant’s legal guardian.

(24) *Surviving spouse* means the husband or wife living with or dependent for support on a deceased employee at the time of his or her death, or living apart for reasonable cause or because of his or her desertion.

(25) *Student* means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—



(i) A school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof; or

(ii) A school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body; or

(iii) A school or college or university not so accredited but whose credits are accepted on transfer by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an accredited institution; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof providing courses of not less than 3 months duration, that prepares the individual for a livelihood in a trade, industry, vocation, or profession.

An individual continues to be a student during any interim between school years if the interim does not exceed 4 months and the individual shows to the satisfaction of the Office that he or she has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately after the interim, or during periods of reasonable duration during which, in the judgment of the Office, the individual is prevented by factors beyond his or her control from pursuing his or her education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(26) *A year beyond the high school level* means—

(i) The 12-month period beginning the month after the individual graduates from high school, provided he or she has indicated an intention to continue schooling within 4 months of high school graduation, and each successive 12-month period in which there is school attendance or the payment of compensation based on student attendance, or

(ii) If the individual has indicated that he or she will not continue school-

ing within 4 months of high school graduation, the 12-month period beginning with the month that the individual enters school to continue his or her education, and each successive 12-month period in which there is school attendance or the payment of compensation based on student status.

(b) *Dependents and survivors.* In addition to basic disability benefits for employees the Act provides in section 8133 that certain monthly benefits shall be payable to certain enumerated survivors of employees who have died from an injury sustained in the performance of duty. Section 8110 of the Act provides that any employee who is found eligible for a basic benefit shall be entitled to have such a basic benefit augmented at a specified rate for certain persons living in the beneficiary's household or who are dependent upon the beneficiary for support. The provisions of 5 U.S.C. 8101, 8110, and 8133 defining the nature of such survivorship or dependency necessary to qualify a beneficiary for a survivor's benefit or augmented benefit shall be applicable as appropriate to the provisions of this part.

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10503, Apr. 1, 1987]

#### INFORMATION IN PROGRAM RECORDS

##### **§ 10.10 Custody of records relating to Federal Employees' Compensation Act matters.**

All records, medical and other reports, statements of witnesses and other papers relating to the injury or death of a civil employee of the United States or other persons entitled to compensation or benefits from the United States under the Act and all amendments and extensions thereof, are the official records of the Office and are not records of the agency, establishment or department making or having the care or use of such records.

[52 FR 10504, Apr. 1, 1987]

##### **§ 10.11 Confidentiality of records relating to Federal Employees' Compensation Act matters.**

Records of the Office pertaining to an injury or death are confidential, and are exempt from disclosure to the public under section 552(b)(6) of title 5,

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United States Code. No official or employee of an agency, establishment or department who has investigated or secured statements from witnesses and others pertaining to a claim for benefits, or any person having the care or use of such reports, shall disclose information from or pertaining to such records to any person, except in accordance with applicable regulations (see 29 CFR parts 70 and 70a).

[52 FR 10505, Apr. 1, 1987]

### § 10.12 Protection, release, inspection and copying of records.

(a) The protection, release, inspection and copying of records of the Office pertaining to an injury or death shall be accomplished in accordance with the rules, guidelines and provisions contained in 29 CFR parts 70 and 70a and the annual notice of systems of records and routine uses as published in the FEDERAL REGISTER. However, since the records of the Office are contained within a government-wide system of records under the control of the Department of Labor, 29 CFR 70a.1(b)(3) provides that the regulations of the agency in possession of such records shall govern the procedure for requesting access to, or amendment of the records, including initial determinations on such requests, while the Department of Labor regulations shall govern all other aspects of safeguarding these records established by the Privacy Act. Where requested to amend such records in possession of the agency is received, the agency shall so advise the Office and shall provide the Office with a copy of any amended record.

(b) Records of the Office pertaining to an employee or beneficiary which are in the possession of the employing agency may be released by the employing agency to that employee or beneficiary, or their representative, in accordance with the provisions contained in 29 CFR part 70a. This includes copies retained by the employing agency of records previously submitted to and in the possession of the Office.

(c) When an employee or beneficiary is prosecuting an action for damages under 5 U.S.C. 8131, records may be re-

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leased as provided for in 29 CFR part 70a.

[52 FR 10505, Apr. 1, 1987]

### MISCELLANEOUS PROVISIONS

#### § 10.20 Forms.

(a) Notice of injury, claims and certain specified reports required to be made with respect to any claim shall be made on approved forms as are prescribed by the Office. Supervisors are expected to maintain an adequate supply of the basic forms needed for the proper recording and reporting of injuries. Pamphlet CA-136, obtainable from OWCP, lists the forms to be stocked by the agencies; and also tells where the forms may be obtained.

(b) The basic forms cited in this chapter are:

| Form No.          | Title   |
|-------------------|---|
| (1) CA-1 .....    | Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation. |
| (2) CA-2 .....    | Notice of Occupational Disease and Claim for Compensation.                                    |
| (3) CA-2a .....   | Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation.                 |
| (4) CA-3 .....    | Report of Termination of Disability and/or Payment.   |
| (5) CA-5 .....    | Claim for Compensation by Widow, Widower and/or Children.                                     |
| (6) CA-5b .....   | Claim for Compensation for Parents, Brothers, Sisters, Grandparents, or Grandchildren.        |
| (7) CA-6 .....    | Official Superior's Report of Employee's Death.   |
| (8) CA-7 .....    | Claim for Compensation Due to Traumatic Injury of Occupational Disease.                       |
| (9) CA-8 .....    | Claim for Continuing Compensation on Account of Disability.                                   |
| (10) CA-12 .....  | Claim for Continuance of Compensation.  |
| (11) CA-16 .....  | Authorization of Examination and/or Treatment.  |
| (12) CA-17 .....  | Duty Status Report.   |
| (13) CA-20 .....  | Attending Physician's Report.   |
| (14) CA-20a ..... | Attending Physician's Supplemental Report.  |

(c) Copies of the forms enumerated in this paragraph are available for public inspection at the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20211.

[40 FR 6877, Feb. 14, 1975, as amended at 41 FR 2, Jan. 2, 1976; 52 FR 10505, Apr. 1, 1987]

**§ 10.21 Waiver of compensation rights invalid.**

No official superior or other person is authorized to require an employee or other claimant to enter into any agreement, either before or after an injury or death, to waive his or her right to claim compensation under the Act. No waiver of compensation rights shall be valid.

**§ 10.22 Exclusiveness of remedy.**

The benefits provided to employees and to survivors of employees by the Act constitute the exclusive remedy against the United States for employment related injuries or deaths. The injury or death of an employee gives rise to no right to recover damages from the United States exclusive of the Act.

**§ 10.23 Penalties.**

(a) Any employee, beneficiary, official superior, representative, or other person who knowingly makes, or knowingly certifies to, any false statement, misrepresentation, concealment of fact, or any other act of fraud with respect to a claim under the Act, or who knowingly accepts compensation to which that person is not entitled, is subject to criminal prosecution and may, under appropriate U.S. Criminal Code provisions (e.g., 18 U.S.C. 287 and 1001), be punished by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

(b) Any employee, beneficiary, official superior, representative, or other person who, with respect to a claim under the Act, enters into any agreement, combination, or conspiracy to defraud the United States by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim is subject to criminal prosecution and may, under appropriate U.S. Criminal Code provisions (e.g., 18 U.S.C. 286), be punished by a fine of not more than \$10,000 or imprisonment for not more than ten years, or both.

(c) Any person charged with the responsibility of making reports in connection with an injury who willfully fails, neglects, or refuses to do so; induces, compels, or directs an injured employee to forego filing a claim; or willfully retains any notice, report, or

paper required in connection with an injury, is subject to a fine of not more than \$500 or imprisonment for not more than one year, or both.

[52 FR 10505, Apr. 1, 1987]

## Subpart B—Notice of Injury and Claim for Compensation, Administrative Procedures

### NOTICE OF INJURY OR DEATH

**§ 10.100 How to file a notice of injury or death.**

(a) *Traumatic injury.* An employee who sustains a traumatic injury which the employee believes occurred while in the performance of duty shall give written notice of the injury on Form CA-1 to the official superior. If the employee is unable to give written notice, it may be given by any person acting on the employee's behalf.

(b) *Occupational disease or illness.* An employee who has a disease or illness which the employee believes to be employment-related shall give written notice of the condition on Form CA-2 to the official superior. If the employee is unable to give written notice, it may be given by any person acting on the employee's behalf. If it is impractical to give written notice to the employee's official superior, it may be given to any official of the employing agency, or directly to the Office. Form CA-2 must be accompanied by a statement from the employee to include:

(1) A detailed history of the disease or illness with identification of part(s) of the body affected;

(2) Complete details of types of substances or conditions of employment believed responsible for the disease or illness;

(3) A description of specific exposures to substances or stressful conditions including locations, frequency and duration, and

(4) Whether the employee ever suffered a similar condition and, if so, full details of onset, history and medical care received with names and addresses of physicians rendering treatment.

(c) *Death.* If an employee dies because of a traumatic injury believed to have been sustained in the performance of duty or because of a disease or illness

believed to have been employment-related, the employee's survivor(s), or any person acting on behalf of the survivor(s), shall notify the official superior of the death. If it is impractical to give notice to the employee's official superior, it may be given to any official of the employing agency, or directly to the Office.

(d) The person submitting a notice under paragraph (a) or (b) of this section shall include the Social Security Number (SSN) of the injured worker. In cases where the worker dies as a result of an on-the-job injury and the notice is submitted under paragraph (c) of this section, the SSN of the person seeking benefits shall be disclosed in addition to the SSN of the deceased worker.

[52 FR 10505, Apr. 1, 1987, as amended at 58 FR 68032, Dec. 23, 1993]

**§ 10.101 When a notice of injury or death must be given.**

(a) *Traumatic injury.* Written notice of a traumatic injury or death due to a traumatic injury shall be given as soon as possible but, pursuant to 5 U.S.C. 8119, no later than 30 days from the date on which the injury or death occurred. Given the provisions of 5 U.S.C. 8122 and § 10.105 of this part concerning the timely filing of a claim for compensation, the failure to give notice within 30 days may result in a loss of compensation rights.

(b) *Occupational disease or illness.* Written notice of disease or illness believed to be employment related shall be given as soon as possible but no later than 30 days from the date on which the employee was first aware, or by the exercise of reasonable diligence should have been aware, of a possible relationship between the disease or illness and the conditions or factors of employment. Given the provisions of 5 U.S.C. 8122 and § 10.105 of this part concerning the timely filing of a claim for compensation, the failure to give notice within 30 days may result in a loss of compensation rights.

(c) *Death.* In the case of death, notice shall be given as soon as possible but no later than 30 days from the date of death or the date the employee's survivor first became aware, or by the exercise of reasonable diligence should

have been aware, of a possible relationship between the death and the conditions or factors of employment. Given the provisions of 5 U.S.C. 8122 and § 10.105 of this part concerning the timely filing of a claim for compensation, the failure to give notice within 30 days may result in a loss of compensation rights.

[52 FR 10506, Apr. 1, 1987]

**§ 10.102 Report of injury by the official superior.**

(a) As soon as possible but no later than 10 working days after receipt of written notice of injury from the employee, the official superior shall submit to the Office a written report of every injury or occupational disease or illness which is likely to:

(1) Result in a medical charge against the Office;

(2) Result in disability for work beyond the day or shift of injury;

(3) Require prolonged treatment (i.e., more than two instances of medical examination and/or treatment);

(4) Result in future disability;

(5) Result in permanent impairment or;

(6) Result in a continuation of pay pursuant to 5 U.S.C 8118.

Portions of Forms CA-1 or CA-2 are provided for this purpose. If the injury does not come under any of the categories enumerated in this paragraph, the Form CA-1 or CA-2 need not be submitted to the Office but shall be retained as a permanent record in the Employee Medical Folder in accordance with the guidelines established by the Office of Personnel Management. Regardless of whether the Form CA-1 or CA-2 is forwarded to the Office or retained by the employing agency, immediately upon receipt of the written notice of injury the official superior shall complete the "Receipt of Notice of Injury" and return it to the employee.

(b) If the official superior has reason to disagree with any particular of the injury as reported by the employee, the official superior or other agency official shall explore the circumstances of the injury and submit to the Office a full written explanation specifying the areas of disagreement and the findings upon which the disagreement is based. The report may be accompanied by

supporting documentation such as witness statements, medical reports or records, or any other relevant information. Any written explanation of disagreement shall be submitted to the Office at the same time as Form CA-1 in cases of traumatic injury, and within 30 calendar days from the date Form CA-2 is received from the employee in occupational disease cases. If written explanation in support of the disagreement is not submitted, the Office may accept as factual the report of injury made by the employee. Disagreement with the particulars of the injury as reported by the employee may not be used by the employing agency to delay the forwarding of the claim to the Office or to compel or induce the employee to change the claim.

(c) In cases of disease or illness, Form CA-2 must be accompanied by the following from the official superior:

(1) A detailed description of the employee's duty assignments including the nature, extent and duration of exposure to fumes, chemicals, or other irritants or situations;

(2) Copies of all physical examination reports, including x-ray reports and laboratory data, on file for the employee;

(3) A record of the employee's absences from work showing the reason for the absence in each instance, if known;

(4) Statements from each co-worker currently employed by the agency who has firsthand knowledge about the employee's condition and its cause, and;

(5) The official superior's comments on the accuracy of the employee's statement required by § 10.100(b) of this part.

(d) Other reports shall be submitted by the official superior as described elsewhere in this part or as may be required by the Office.

(e) The official superior is authorized to furnish an employee or beneficiary, or the representative, with a copy of any notice of injury, claim form, or other document pertaining to that employee or beneficiary which has been completed and submitted to the Office by the employing agency. This includes any notice of injury, claim form, or other document previously submitted

to the Office, a copy of which was retained by the employing agency. While furnishing a copy of such forms and documents is not required on a routine basis in every case, the official superior shall furnish a copy of such forms and documents upon receipt of a written request from the employee or beneficiary, or the representative.

[52 FR 10506, Apr. 1, 1987]

#### **§ 10.103 Report of death by the official superior.**

If an employee dies because of a traumatic injury or a disease or illness sustained in the performance of duty, the official superior shall immediately report the death to the Office by telephone or telegram. As soon as possible but no later than 10 working days after receipt of knowledge of death, the official superior shall complete and send Form CA-6 to the Office.

[52 FR 10506, Apr. 1, 1987]

#### **§ 10.104 Report of the attending physician.**

(a) In all cases reported, the employee must submit, or arrange for the submission of, a medical report to the Office from the attending physician. This report should include: dates of examination and treatment; history given by the employee; findings; results of x-rays and laboratory tests; diagnosis; course of treatment; and the physician's opinion, with medical reasons, regarding causal relationship between the diagnosed condition(s) and the factors or conditions of the employment. This report may be made:

(1) On Part B of Form CA-16;

(2) On Form CA-20 or CA-20a; or

(3) By narrative report on the physician's letterhead stationery. The report shall be submitted to the Office as soon as possible after medical examination or treatment is received. (See also § 10.204(a)(1).)

(b) Additional reports shall be submitted by the attending physician as described elsewhere in this part or as may be required by the Office.

(c) Medical reports from the attending physician are to be submitted directly to the Office. However, the employing agency may request copies of these reports from the Office.

[52 FR 10506, Apr. 1, 1987]

CLAIMS FOR COMPENSATION

**§ 10.105 Time for perfecting a claim for compensation.**

(a) Claim for disability compensation. An injured employee is required to file a written claim for compensation within 3 years after the injury before compensation may be paid. If, however, the official superior had actual knowledge of the injury within 30 days, or if written notice was given within 30 days, compensation may be allowed regardless of whether a written claim was made within 3 years after the injury. Actual knowledge must be such as to put the official superior reasonably on notice of an on-the-job injury.

(b) *Claim for death compensation.* If the employee dies, a written claim for compensation by or on behalf of the survivors is required before compensation may be paid. This claim is to be filed within 3 years after the death, unless within 30 days of such death, the official superior had actual knowledge of the death, due to an employment related injury or disease or written notice of such death was given to the official superior within 30 days of such death. The timely filing of a disability claim because of an on-the-job injury will satisfy the time requirements for a death claim based on the same injury.

(c) *Claim predicated upon a latent disability.* In a case of latent disability, or death due to a latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability or dies and is aware or his survivors are aware, or by the exercise of reasonable diligence should have been aware, of the casual relationship of the compensable disability or death to the employment. In such a case, the time for giving notice of injury or death begins to run when the employee is aware or the survivors are aware, or by the exercise of reasonable diligence should have been aware that the employee's condition or death is

casually related to his or her employment, whether or not there is a compensable disability or death.

(d) The time limitations described in this section do not begin to run against a minor until such minor reaches 21 years of age or has had a legal representative appointed; or run against an incompetent individual while such individual is incompetent and has no duly appointed legal representative; or run against any individual whose failure to comply is excused by the Secretary of Labor on the ground that notice could not be given because of exceptional circumstances.

(e) If no claim is filed by an injured employee or by someone acting on the employee's behalf prior to his or her death, the right to claim compensation for disability other than medical expenses ceases and does not survive.

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10507, Apr. 1, 1987]

**§ 10.106 How to file a claim for disability compensation.**

(a) Whenever an employee, as a result of an injury in the performance of duty, is disabled with loss of pay for more than 3 calendar days or has a permanent impairment or serious disfigurement as described in 5 U.S.C. 8107, the official superior shall furnish the employee with Form CA-7 for the purpose of claiming compensation and shall advise the employee of his or her rights under the Act.

(b) The employee, upon termination of wage loss if the period of wage loss is less than 10 calendar days, or at the expiration of 10 calendar days from the date pay stops if the period of wage loss will be 10 calendar days or more, should file Form CA-7 with the Office or with any person designated by the Office to receive claims. The employee's official superior is so designated to receive claims on behalf of the Office. The employee, or someone acting on the employee's behalf, must complete the front of Form CA-7 and, unless special circumstances require otherwise, submit the form to the official superior for completion and transmission to the Office. The employee is responsible for submitting, or arranging for the submission of, medical evidence in support

of the claim. Form CA-20 is attached to Form CA-7 for this purpose.

(c) Upon receipt of Form CA-7 from the employee (or from someone acting on the employee's behalf), the official superior shall complete the appropriate portions of the claim form. As soon as possible, but not later than 5 working days after its receipt from the employee, the official superior shall forward the completed Form CA-7 and any accompanying medical report to the Office.

(Approved by the Office of Management and Budget under control number 1215-0103)

[52 FR 10507, Apr. 1, 1987]

**§ 10.107 Application for augmented compensation.**

(a) While the employee has one or more dependents as defined in 5 U.S.C. 8110, the employee's basic compensation for wage loss as provided in section 8105 or 8106(a), or for permanent impairment as provided in section 8107(a), shall be augmented as provided in section 8110. Form CA-7 includes an application for such augmented compensation.

(b) Augmented compensation payable while an employee has an unmarried child as defined by 5 U.S.C. 8110, which would otherwise terminate because the child reaches the age of 18, may be continued while the child is a student as defined by the Act and in § 10.5(a)(25) of this part.

(c) The Office may require an employee to submit an affidavit or statement as to any dependents, or to submit necessary supporting documentation such as birth or marriage certificates or court orders, in the manner and at the times the Office specifies, in order to determine the employee's entitlement to augmented compensation. If an employee when required, fails within 30 days of the date of the request to submit such affidavit, statement, or supporting documentation the employee's right to augmented compensation otherwise payable shall be suspended until such time as the requested affidavit, statement, or supporting documentation is received, at which time augmented compensation will be reinstated retroactive to the date of suspension provided the em-

ployee is entitled to such augmented compensation.

(d) An employee entitled to or receiving augmented compensation shall promptly notify the Office of any event which would terminate the employee's continued entitlement to augmented compensation. Any checks or payments received after such event shall be returned to the Office as soon as possible. Where augmented compensation is paid by the Office beyond the date entitlement terminated, the Office shall make proper adjustment and any difference between actual entitlement and the amount already paid is an overpayment of compensation and may be recovered pursuant to 5 U.S.C. 8129 and other appropriate statutes.

[52 FR 10507, Apr. 1, 1987]

**§ 10.108 How to file an original claim for death benefits.**

An original claim for death benefits may be filed by any survivor of a deceased employee (see section 8133 of the Act) or any other person acting on behalf of such survivor. Form CA-5 is provided by the Office for this purpose, and should be executed as provided therein. An original death claim may be filed by delivering a completed Form CA-5 to the Office, or to any person designated by the Office to receive such claim. The deceased employee's former official superior is so designated to receive such claims on behalf of the Office, and the person claiming benefits should submit the claim to such former official superior, unless special circumstances require a different procedure. The official superior shall, when it is practicable, furnish to all persons likely to be entitled to compensation for death of an employee, a Form CA-5 or CA-5b with information as to the use of the form for making claim for compensation and procedure in respect of filing such form. The furnishing of assistance in preparing such form or in obtaining evidence relating to the claim shall be without charge by the official superior. Any claim or paper purporting to claim compensation on account of death, submitted to the deceased employee's former official superior, shall be transmitted promptly to the Office.

**§ 10.109 Claims for balance of schedule awards unpaid at death when death is due to other causes.**

(a) If an employee who has sustained compensable impairment within the meaning of 5 U.S.C. 8107, and has filed a valid claim during his or her lifetime, dies from causes other than the injury which resulted in the compensable impairment before the entire amount due for the schedule was paid, a claim for the unpaid balance may be made on a form approved by the Office by the surviving spouse or child in accordance with 5 U.S.C. 8109(a)(3)(D). If there is no surviving spouse or child, then a claim for the unpaid balance may be made by any other survivors pursuant to 5 U.S.C. 8109(a)(3)(D) and benefits shall be paid in the proportions and under the conditions and in the order as follows:

(1) To the parent or parents wholly dependent for support upon the decedent in equal shares with any wholly dependent brother, sister, grandparent or grandchild;

(2) To the parent or parents partially dependent for support upon the decedent in equal shares when there are no wholly dependent brothers, sisters, grandparents or grandchildren (or other wholly dependent parent); and

(3) To the parent or parents partially dependent upon the decedent, 25 percent of the amount payable, shared equally, and the remaining 75 percent to any wholly dependent brother, sister, grandparent or grandchild (or wholly dependent parent), share and share alike.

(b) Any survivor referred to in paragraph (a) of this section must be alive to receive any payment and any such survivor shall not have a vested right to any such payment. Claims for continuation of payments under 5 U.S.C. 8109 shall be made in the manner described by § 10.126 of this subpart.

(c) The entitlement of any survivor to payment under 5 U.S.C. 8109 shall cease upon the happening of any event which would terminate such right under 5 U.S.C. 8133. The termination of such right and any necessary reapportionment shall be governed by § 10.128 of this subpart.

(d) The disposition of any balance not paid under the foregoing paragraphs

shall be made in accordance with 5 U.S.C. 8109(a)(D)(v).

[52 FR 10507, Apr. 1, 1987]

EVIDENCE

**§ 10.110 Burden of proof.**

(a) A claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the claimed condition and the disability, if any, was caused, aggravated, or adversely affected by the claimant's Federal employment. As a part of this burden, the claimant must specify the employment incident or the factors or conditions of employment to which the injury, disease or disability is attributed, and must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing causal relationship between the claimed condition and the Federal employment. The fact that a condition or disease manifests itself during a period of Federal employment by itself does not raise an inference that there is causal relationship between the two. Neither the fact that the condition or disease became manifest during a period of Federal employment, nor the belief of the claimant that the condition or disease was caused or aggravated by employment conditions or factors, is sufficient in itself to establish causal relationship.

(b) If a claimant initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. Subsequent submissions of evidence still not sufficient to carry the burden of proof will not require another notification of defects. The Office may, in its discretion, undertake to develop either factual or medical evidence for determination of the claim. For example, when the claim is based on exposure to hazardous material or noise at work, or when relevant evidence is in the possession of the Federal government and not accessible to the claimant (e.g., a deactivated employing agency facility), the Office will



undertake to develop the necessary evidence.

(c) Once the Office has accepted a claim and paid compensation, it has the burden, before terminating or reducing compensation, of establishing by the weight of the evidence that the disability for which compensation was paid has ceased, or that the disabling condition is no longer causally related to the employment, or that the claimant is only partially disabled, or that its initial decision was in error.

[52 FR 10508, Apr. 1, 1987]

**§ 10.111 Submission of other evidence.**

The responsibilities of the official superior and the claimant to submit evidence are specified elsewhere in this part. A claimant, a person acting on the claimant's behalf, or the employing agency may submit to the Office any other evidence which is deemed relevant and pertinent to the initial and ongoing determination of the claim.

[52 FR 10508, Apr. 1, 1987]

TERMINATION AND CONTINUATION OF  
ELIGIBILITY

**§ 10.120 Report of termination of disability or return to work.**

In all cases reported to the Office the official superior shall notify the Office immediately upon the injured employee's return to work or termination of disability. Form CA-3 is provided for this purpose. It shall be used unless a report of termination of disability is made to the Office on Form CA-1 or CA-2, or CA-7 as appropriate, or in some other manner.

[52 FR 10508, Apr. 1, 1987]

**§ 10.121 Recurrence of disability.**

(a) The official superior shall notify the Office if, after the employee returns to work, the original injury causes the employee to stop work again. Form CA-2a is provided for this purpose. If the original injury was not previously reported to the Office, notice of the original injury shall be made on Form CA-1 or CA-2, as appropriate, and attached when Form CA-2a is submitted. Medical reports concerning the original injury should also be attached if not previously submitted.

The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.

(b) When the employee has received medical care as a result of the recurrence, he or she should arrange for a detailed medical report to be submitted by the attending physician. The report should include: dates of examination and treatment; history given by the employee; findings; results of x-ray and laboratory tests; diagnosis; course of treatment; the physician's opinion, with medical reasons, regarding causal relationship between the employee's condition and the original injury; work limitations or restrictions, and prognosis. The employee should also submit, or arrange for the submission of, similar medical reports for any examination and/or treatment received subsequent to returning to work following the original injury.

(c) The employee must also give the reasons for believing the recurrence of disability is related to the original injury. A statement from the employee must accompany Form CA-2a describing the employee's duties upon return to work after the original injury, stating whether there were any other injuries or illness, and giving a general description of the employee's physical condition during the intervening period. The official superior may submit comments concerning the employee's statement.

(d) If the injured employee does not return to duty prior to the date Form CA-2a is submitted to the Office, the return to duty or termination of disability shall be reported to the Office on Form CA-3 unless otherwise reported on Form CA-7 or Form CA-8.

(e) Claim for compensation as a result of the recurrence of disability should be made using Form CA-7, unless such form was previously filed after the original injury. If Form CA-7 was previously filed, compensation must be claimed using Form CA-8. A completed claim form plus a medical report on Form CA-20 or CA-20a (or in narrative form) must be submitted before compensation may be paid.

[52 FR 10509, Apr. 1, 1987]

**§ 10.122 Claim for continuing compensation for disability.**

Form CA-8 is provided to claim compensation for additional periods of time after Form CA-7 is submitted to the Office. It is the responsibility of the employee to submit Form CA-8. Without receipt of such claim, the Office has no knowledge of continuing wage loss. Therefore, while disability continues, a claim on Form CA-8 should be submitted every 2 weeks until the employee is otherwise instructed by the Office. The employee shall complete and sign the face of the form, and the official superior shall complete the reverse side. The employee is responsible for submitting, or arranging for the submission of, medical evidence in support of the claim. Form CA-20a is attached to Form CA-8 for this purpose. The official superior shall forward the completed Form CA-8 and any accompanying medical report to the Office within 5 working days of receipt from the employee.

(Approved by the Office of Management and Budget under control number 1215-0103)

[52 FR 10509, Apr. 1, 1987, as amended at 54 FR 18834, May 2, 1989]

**§ 10.123 Employing agency's responsibilities in returning the employee to work.**

(a) Upon authorization of medical care, the official superior shall provide the employee with written notification of his or her obligation to return to work as soon as possible and, with respect to alternative work, shall

(1) Advise the employee in the same manner as provided by § 10.207(b); and

(2) Advise the employee of his or her responsibilities under § 10.124 of this subpart.

The term "return to work" as used in this section is not limited to return to work at the employee's normal work-site, but may include return to work at other alternate locations.

(b) The employing agency shall monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA-17 is provided for this purpose. To facilitate an injured employee's return to suitable employment, the employing agency may correspond in writing with the

employee's physician concerning the work limitations and restrictions imposed by the effects of the injury and possible job assignments. The employing agency shall concurrently send a copy of any such correspondence to the Office and the claimant, as well as a copy of the physician's response when received.

(c) Where the employing agency is notified in writing that the attending physician has found the employee to be partially disabled, and the employee is able to:

(1) Perform in a specific alternative position which is available within the agency and for which the agency has furnished the employee with a written description of the specific duties and physical requirements, the agency shall notify the employee immediately of the date of availability. To facilitate early return to work, the agency may inform the employee of the offer and its availability by telephone, but must provide written confirmation of the offer as soon as possible thereafter.

(2) Perform restricted or limited duties, the agency shall determine whether necessary accommodation can be made, and if so, advise the employee in writing of the duties, their physical requirements and availability. To facilitate early return to work, the agency may inform the employee of the offer by telephone, but must provide written confirmation of the offer as soon as possible thereafter.

(d) Where the nature and extent of injury prohibit the employee from returning to the duties of the position held at the time of injury, and the agency is unable to accommodate the restrictions and limitations imposed on the employee by the injury, and employment is consequently terminated, the agency may, in cooperation and coordination with the Office, subsequently determine the former employee's current physical condition and offer reemployment in a position suitable to the former employee's capabilities. Such reemployment offer must be in writing and include a description of the duties of the position being offered, the physical requirements of those duties, and the date the former employee is to return to work or, in the alternative, the date by which the former

employee must notify the agency of his or her decision with respect to acceptance or refusal of the reemployment offer.

(e) A complete copy of any agency offer of employment or reemployment should be sent to the Office at the same time as it is sent to the employee.

(f) Where an injured employee relocates after having been terminated from the agency's employment rolls, the Office encourages employing agencies to offer suitable reemployment in the location where the former employee currently resides. If this is not practical, the agency may offer suitable employment at the employee's former duty station or other alternate location. Where acceptance of the offered reemployment would result in relocation expenses being incurred by the former employee, such expenses as are considered reasonable and necessary may be paid by the Office from the Employees' Compensation Fund. In determining whether a relocation expense is reasonable and necessary, the Office shall use as a guide the Federal travel regulations pertaining to permanent change of duty station.

[52 FR 10510, Apr. 1, 1987]

**§ 10.124 Employee's obligation to return to work or to seek work when able.**

(a) An employee whose disability has ceased and who is able to resume regular Federal employment has the obligation to do so. No further compensation for wage loss is payable once the employee has recovered from the employment injury to the extent that he or she could perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) Where an employee has been advised by the employing agency in writing of the existence of specific alternative positions within the agency, the employee shall furnish the description and physical requirements of such alternative positions to the attending physician and inquire whether and when the employee will be able to perform such duties. Where an agency has advised the employee of its willingness to accommodate, where possible, the employee's work limitations and restrictions, the employee shall so advise

the attending physician and request the physician to specify the limitations and restrictions imposed by the injury. The employee has the responsibility to advise the employing agency immediately of the limitations and restrictions imposed.

(c) Where an employee has been offered suitable employment (or reemployment) by the employing agency (i.e., employment or reemployment which the Office has found to be within the employee's educational and vocational capabilities, within any limitations and restrictions which pre-existed the injury, and within the limitations and restrictions which resulted from the injury), or where an employee has been offered suitable employment as a result of job placement efforts made by or on behalf of the Office, the employee is obligated to return to such employment. An employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of showing that such refusal or failure to work was reasonable or justified, and shall be provided with the opportunity to make such showing before a determination is made with respect to termination of entitlement to compensation as provided by 5 U.S.C. 8106(c)(2) and paragraph (e) of this section.

(d) When a permanently disabled employee who cannot return to the position held at the time of injury due to the residuals of the employment injury has recovered sufficiently to be able to perform some type of work, the employee must seek suitable work either in the Government or in private employment. Such an employee must report the efforts made to obtain suitable employment at such times and in such manner as the Office may require including the names and addresses of the persons or establishments to whom the employee has applied for work.

(e) A partially disabled employee who, without showing sufficient reason or justification, refuses to seek suitable work or refuses or neglects to work after suitable work has been offered to, procured by, or secured for the employee, is not entitled to further compensation for total disability, partial disability, or permanent impairment as provided by sections 8105, 8106,

and 8107 of the Act, but remains entitled to medical benefits as provided by section 8103 of the Act. An employee shall be provided with the opportunity to make such showing of sufficient reason or justification before a determination is made with respect to termination of entitlement to compensation as provided by 5 U.S.C. 8106(c).

(f) Pursuant to 5 U.S.C. 8104(a), the Office may direct a permanently disabled employee to undergo vocational rehabilitation. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue participation in a vocational rehabilitation effort when so directed, the Office will, in accordance with 5 U.S.C. 8113(b), reduce prospectively the employee's monetary compensation based on what would probably have been the employee's wage-earning capacity had there not been such failure or refusal. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue participation in the early but necessary stages of a vocational rehabilitation effort (i.e., interviews, testing, counseling, and work evaluations), the Office cannot determine what would have been the employee's wage-earning capacity had there not been such failure or refusal. It will be assumed, therefore, in the absence of evidence to the contrary, that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and the Office will reduce the employee's monetary compensation accordingly. Any reduction in the employee's monetary compensation under the provisions of this paragraph shall continue until the employee in good faith complies with the direction of the Office.

[52 FR 10509, Apr. 1, 1987]

**§ 10.125 Affidavit or report by employee of employment and earnings.**

(a) While in receipt of compensation for partial or total disability, and unless found by the Office to be unnecessary or inappropriate, an employee shall periodically be required to submit an affidavit or other report of earnings from employment or self-employment on either a part-time or full-time basis. If an employee when required, fails

within 30 days of the date of the request to submit such an affidavit or report, the employee's right to compensation for wage loss under section 8105 or 8106 is suspended until such time as the requested affidavit or report is received by the Office, at which time compensation will be reinstated retroactive to the date of suspension. If, in making an affidavit or report, an employee knowingly omits or understates any earnings or remuneration, the employee shall forfeit the right to compensation with respect to any period for which the affidavit or report was required. A false or evasive statement, omission, concealment, or misrepresentation with respect to employment or earnings in a required affidavit or report may, in addition to forfeiture, subject the employee to criminal prosecution.

(b) Where the right to compensation is forfeited, any compensation already paid for the period of forfeiture shall be recovered by deducting the amount from compensation payable in the future. If further compensation is not payable, the compensation already paid may be recovered pursuant to 5 U.S.C. 8129 and the Federal Claims Collection Act (31 U.S.C. 952).

(c) Earnings from employment referred to in this section or elsewhere in this part means gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses, or any other advantages received in kind as part of the wages or remuneration. In general, earnings from self-employment means a reasonable estimate of the rate of pay it would cost the employee to have someone else perform the work or duties the employee is performing. Where self-employment is in the form of a corporation, partnership, or sole proprietorship, a lack of profits for such entity does not remove the employee's obligation to report the employment or the rate of pay.

(d) For the purpose of administering the Act, including the making of proper determinations as to an employee's entitlement to benefits, the Office may, with the written consent of the employee, obtain from the Social Security Administration wage information concerning that employee to include

the names and addresses of employers for whom the employee worked during a specified period of time, the periods employed, and the gross amount of wages earned.

[52 FR 10508, Apr. 1, 1987, as amended at 53 FR 11594, Apr. 7, 1988]

**§ 10.126 Claims for continuing compensation for death.**

A beneficiary to whom an award of compensation has been made on account of an employee's death shall submit additional claims for continuing compensation to the Office once each year, or when required by the Office. Form CA-12 is provided by the Office for this purpose and will be sent to the beneficiary when an additional claim is required. If a beneficiary when required, fails within 30 days of the date of request to submit the form (or an equivalent written statement), the beneficiary's right to compensation, including compensation payable to that beneficiary for or on behalf of another (e.g., compensation payable to a widow on behalf of a child), shall be suspended until such time as the requested form or equivalent written statement is received, at which time compensation will be reinstated at the appropriate rate retroactive to the date of suspension.

[52 FR 10509, Apr. 1, 1987]

**§ 10.127 Continuation of death compensation for a child, brother, sister or grandchild who has reached the age of 18.**

Compensation payable on behalf of a child, brother, sister, or grandchild under 5 U.S.C. 8133, which would otherwise be terminated because such individual has reached 18 years of age, shall be continued if and for so long as he or she is not married and is physically or mentally incapable of self-support, or if he or she is a student as defined in § 10.5(a)(25) for so long as he or she is not married and continues as a student. An individual in receipt of compensation under the provisions of 5 U.S.C. 8133 shall furnish, when so required by the Office, proof of continuing entitlement to such compensation, including certification of school enrollment. If a beneficiary when required, fails within 30 days of the date of the

request to submit such proof, the beneficiary's right to compensation shall be suspended until the requested information is received, at which time compensation will be reinstated retroactive to the date of suspension, provided the beneficiary is entitled to such compensation.

[52 FR 10510, Apr. 1, 1987]

**§ 10.128 Termination of right to compensation for death; reapportionment of compensation.**

(a) When a beneficiary who is receiving compensation on account of death ceases to be entitled to such compensation by reason of death, remarrying before age 60, marrying, reaching the age of 18, ceasing to be dependent, ceasing to be student, or becoming capable of self-support, the beneficiary or someone acting on the beneficiary's behalf shall immediately notify the Office of such event. If the beneficiary, or someone acting on the beneficiary's behalf, receives a check which includes payment of compensation for any period after the date when entitlement ceased for any of the above reasons, the check shall be promptly returned to the Office. The terms marrying and remarrying include common law marriage as recognized and defined by state law in the state where the beneficiary resides.

(b) An event as described in paragraph (a) of this section which results in the termination of compensation to a beneficiary may also result in a reapportionment of the amount of compensation payable to one or more of the remaining beneficiaries. Similarly, the birth of a posthumous child of the deceased employee may also result in a reapportionment of the amount of compensation payable to other beneficiaries. The parent, or someone acting on the child's behalf, shall promptly notify the Office of the birth and submit a certified copy of the birth certificate.

[52 FR 10511, Apr. 1, 1987]

**DETERMINATIONS OF CLAIMS, HEARING AND REVIEW PROCEDURES**

**§ 10.130 Processing of claims.**

Claims for compensation for disability and death are processed by claims examiners of the Office, whose duty it

is to apply the law to the facts as reported, received, or obtained upon investigation. The Federal Employees' Compensation Act, as amended, requires that a decision with respect to entitlement contain findings of fact and be based on consideration of the claim presented by the claimant, the report by his or her immediate official superior, and the completion of such investigation as the Office may deem necessary. There is no required procedure for the production of evidence but the evidence should be in written form. The final authority in the Office in the determination of a claim is vested in the Director of the Office. The decision shall contain findings of fact and a statement of reasons. A copy of the decision, together with information as to the right to a hearing, to a reconsideration, and to an appeal to the Employees' Compensation Appeals Board, shall be mailed to the claimant's last known address. If the claimant is represented before the Office, a copy of the decision will also be mailed to such representative. At the time the decision is issued, a copy will also be sent to the claimant's employing agency.

[52 FR 10511, Apr. 1, 1987]

**§ 10.131 Request for a hearing.**

(a) Any claimant not satisfied with a decision of the Office shall be afforded an opportunity for an oral hearing before an Office representative designated by the Director. A hearing must be requested in writing within 30 days of the date of issuance of the decision and be made to the Office as set forth in the decision. A claimant is not entitled to an oral hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. 8128(a) and § 10.138(b) of this subpart prior to requesting a hearing, or if review of the written record as provided by paragraph (b) of this section has been obtained. At an oral hearing, the claimant shall be afforded the opportunity to present oral testimony and/or written evidence in further support of the claim. A claimant may change his or her selection of an oral hearing to a review of the written

record as provided by paragraph (b) of this section; however, such written request for change must be made within 30 days after the date of the Office's acknowledgment of receipt of the initial request.

(b) In lieu of an oral hearing, a claimant shall be afforded an opportunity for a review of the written record by an Office representative designated by the Director. Such review will not involve oral testimony or attendance of the claimant; however, the claimant may submit any written evidence or argument which he or she believes relevant. A review of the written record must be requested in writing within 30 days of the date of issuance of the decision, specify the decision and/or issue which is the subject of the request, and be made to the Office as set forth in the decision. A claimant is not entitled to a review of the written record if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. 8128(a) and § 10.138(b) of this subpart prior to requesting a review of the written record, or if an oral hearing has been obtained as provided by paragraph (a) of this section. A claimant may change his or her selection of a review of the written record to an oral hearing as provided by paragraph (a) of this section; however, such written request for change must be made within 30 days after the date of the Office's acknowledgment of receipt of the initial request. Where timely request for a review of the written record is received, the Office shall furnish the employing agency with a copy of the claimant's request and allow 15 days for the agency to submit any comments and/or documents which it believes relevant and material to the issue in question. Any comments or documents submitted by the agency are subject to review and comment by the claimant within 15 days following the date the Office sends any such agency submission to the claimant. Following a review of the record and any evidence submitted, the Office representative shall decide the claim and inform the claimant, the claimant's

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representative and the employing agency of the decision.

[52 FR 10511, Apr. 1, 1987]

### **§ 10.132 Time and place of hearing; prehearing conference.**

The Office representative shall set the time and place of the hearing and shall mail written notice thereof to the claimant, the claimant's representative, and the employing agency at least 15 days prior to the hearing. When practicable, the hearing will be set at a time and place convenient for the claimant. At the request of the claimant, the Office representative may schedule a prehearing conference to further define or clarify the issues. Request for such a conference must be made to the Office representative in writing at least 5 days prior to the scheduled date of the hearing. The decision whether or not to schedule a prehearing conference shall be solely within the discretion of the Office representative.

[52 FR 105011, Apr. 1, 1987]

### **§ 10.133 Conduct of hearing.**

(a) In conducting the hearing, the Office representative shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 5 of the Administrative Procedure Act, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as may be adduced by the claimant and shall, in addition, receive such other evidence as the representative may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded. The recording, either by magnetic tape or by transcription, shall be made a part of the case record.

(b) Pursuant to 5 U.S.C. 8126 the Office may whenever necessary:

(1) Issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Require the production of books, papers, documents, and other evidence, with respect to proceedings conducted for the purpose of determining the validity of any claim under this part.

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10512, Apr. 1, 1987]

### **§ 10.134 Subpoenas; witness fees.**

(a) When reasonably necessary for full presentation of a case, an Office hearing representative may upon his or her own motion, or upon request of the claimant, issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. A claimant who desires the issuance of a subpoena shall, not less than 20 days prior to the date fixed for the hearing, file with the Office representative a written request therefor, designating the witness or documents to be produced, and describing the address and location thereof with sufficient particularity to permit such witness or documents to be found. The request for a subpoena shall state the pertinent facts which the claimant expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpoena. A subpoena issued under the provisions of this section shall be issued in the name of the Office hearing representative, and shall be served either in person by an authorized representative of the Office or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. Where service is made in person by an authorized Office representative, such representative shall make an affidavit stating that he or she personally served a copy of the subpoena upon the person named therein. Where service is by certified mail, the signed returned post office receipt shall serve as proof of service.

(b) Non-government witnesses subpoenaed under this section who have submitted evidence into the case record at the request of the Office shall be paid the same fees and mileage as are paid for like services in the District

Court of the United States where the subpoena was returnable. However, in the case of an expert witness, the witness fee shall not exceed the local customary fee for such service. Fees and mileage requested by such witnesses shall be paid by the Office.

(c) Non-government witnesses subpoenaed under this section who have submitted evidence into the case record at the request of the claimant or who have not submitted evidence into the case record but have testimony which is relevant and material to the issue in question and were subpoenaed at the request of the claimant, shall be paid the same fees and mileage as are paid for like services in the District Court of the United States where the subpoena was returnable. However, in the case of an expert witness, the witness fee shall not exceed the local customary fee for such service. Fees and mileage requested by such witnesses shall be paid by the claimant.

[52 FR 10513, Apr. 1, 1987]

**§ 10.135 Employing agency attendance at hearings and submission of evidence.**

The employing agency does not have the right to request a hearing pursuant to 5 U.S.C. 8124. However, the employing agency has an interest in the outcome of the hearing and frequently possesses information pertinent to issues raised at the hearing. Therefore, the employing agency shall be afforded the opportunity to have an agency representative in attendance at the hearing and/or to request that it receive a copy of the hearing transcript. Where the employing agency sends a representative, the representative will attend primarily in the role of an observer without the right to question the claimant or make any argument. However, since the claimant is entitled to present evidence in support of the claim, the agency representative may, upon the specific request of the claimant, be called upon by the Office representative to give oral testimony. Where the employing agency requests that it receive a copy of the hearing transcript, the agency will be allowed 15 days following release of the transcript to submit comments or additional material for inclusion in the

record. Any comments or materials submitted by the agency are subject to review and comment by the claimant within 15 days following the date the Office sends any such agency submission to the claimant.

[52 FR 10512, Apr. 1, 1987]

**§ 10.136 Termination of hearing; release of decision.**

The Office representative shall fix the time within which evidence will be received and shall terminate the hearing by mailing a copy of the decision, setting forth the basis therefor, to the claimant's last known address and to the claimant's representative, if any. A copy of the decision will also be mailed to the employing agency.

[52 FR 10512, Apr. 1, 1987]

**§ 10.137 Postponement; withdrawal or abandonment of request for hearing.**

(a) A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least 3 days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in the assessment of costs against such claimant.

(b) A claimant may withdraw a request for a hearing at any time by written notice to the Office representative before the hearing is held, or on the record at the hearing.

(c) A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, another hearing will be scheduled. Unless extraordinary circumstances such



as hospitalization, a death in the family, or similar circumstances which prevent the claimant from appearing are demonstrated, failure of the claimant to appear at the third scheduled hearing shall constitute abandonment of the request for a hearing.

[52 FR 10512, Apr. 1, 1987]

**§ 10.138 Review of decision.**

(a) Under the discretionary authority granted by 5 U.S.C. 8128(a), the Office may review an award for or against the payment of compensation at any time on its own motion and may, as a result of that review, affirm, reverse or modify the previous decision and inform the claimant, the claimant's representative and the employing agency of the decision.

(b)(1) Under the discretionary authority granted by 5 U.S.C. 8128(a), the Office may review an award for or against the payment of compensation on application of the claimant. No formal application for review is required, but the claimant must make a written request identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider, and give the reasons why the decision should be changed. Where the decision or issue cannot be reasonably determined from the claimant's application for review, the application will be returned to the claimant for clarification without further action by the Office with respect to the application. The claimant may obtain review of the merits of the claim by—

(i) Showing that the Office erroneously applied or interpreted a point of law, or

(ii) Advancing a point of law or a fact not previously considered by the Office, or

(iii) Submitting relevant and pertinent evidence not previously considered by the Office.

(2) Any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim. Such a denial of application is not subject to review under this section or to hearing under § 10.131. Further, the Office will not review

under this paragraph a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision. Where proper application is submitted and the Office finds that merit review of the claim is warranted, the Office shall furnish the employing agency with a copy of the claimant's application for reconsideration and allow 15 days for the agency to submit any comments and/or documents which it believes relevant and material to the issue in question. Any comments or materials submitted by the agency are subject to review and comment by the claimant within 15 days following the date the Office sends any such agency submission to the claimant. The Office shall then review the decision and any agency submission, decide the claim, and inform the claimant, the claimant's representative and the employing agency of the decision.

[52 FR 10512, Apr. 1, 1987]

**§ 10.139 Review by the Employee's Compensation Appeals Board.**

Final decisions of the Office, except decisions concerning the amounts payable for medical services, and decisions concerning exclusion and reinstatement of medical providers, are subject to review by the Employees Compensation Appeals Board (ECAB), U.S. Department of Labor, under rules of procedure set forth in part 501 of this title.

[49 FR 18978, May 3, 1984. Redesignated at 52 FR 10512, Apr. 1, 1987]

**§ 10.140 Participation in claims process by employing agency.**

Proceedings conducted with respect to claims filed under the Act are non-adversary in character. Accordingly, a claimant's employing agency shall not have the right, except as provided in subpart C of this part, to actively participate in the claims adjudication process. However, the employing agency may, under circumstances other than that described in § 10.102(b), investigate the circumstances surrounding an injury to an employee and the extent of disability (e.g., an agency may investigate an employee's activities where it appears the employee alleging total disability may be performing

other employment or may be engaging in activities which would indicate less than total disability). Further, the agency has the responsibility to submit to the Office at any time all relevant and probative factual and medical evidence in its possession or which it may acquire through investigation or other means. All evidence submitted will be considered and acted upon by the Office as appropriate, and the Office will inform the claimant, the claimant's representative and the employing agency of such action. In those instances where an employing agency contests a claim at time of initial submission and the claim is subsequently approved, the Office will notify the agency of the rationale for approving the claim.

[52 FR 10513, Apr. 1, 1987]

**§ 10.141 Representation of the Director.**

The Director shall be represented in proceedings with respect to any claim conducted before the Employees' Compensation Appeals Board (ECAB) by attorneys from the Office of the Solicitor of Labor.

[52 FR 10513, Apr. 1, 1987]

**§ 10.142 Representation of claimants.**

Any claimant may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the claimant or his or her legal guardian and shall be sent to the Office. In any case such representative must be qualified under § 10.143.

**§ 10.143 Qualification of representative.**

(a) *Attorney.* Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession or before the Supreme Court of the United States or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative may be appointed as a representative.

(b) *Other person.* Any other person with the approval of the Office may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

**§ 10.144 Authority of representative.**

A representative, appointed and qualified as provided in this part, may make or give on behalf of the claimant any request or notice relative to any proceeding before the Office under the Act, including hearing and review. A representative shall be entitled to present or elicit evidence and to make allegations as to facts and law in any proceeding affecting the claimant and to obtain information with respect to the claim to the same extent as the claimant. Notice to any claimant of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative, and the notice or request shall have the same force and effect as if it has been sent to the claimant.

[52 FR 10513, Apr. 1, 1987]

**§ 10.145 Fees for services.**

(a) No fee for representation services rendered in respect to a claim under this part shall be valid, unless prior approval of such fee has been obtained from the Office.

(b) The fee approved by the Office will be determined on the basis of the actual necessary work performed and will generally include but are not limited to the following factors:

(1) Usefulness of the representative's services to the claimant.

(2) The nature and complexity of the claim.

(3) The actual time spent on development and presentation of the claim.

(4) The amount of compensation accrued and potential future payments.

(5) Customary local charges for similar services.

(6) Professional qualifications of the representative.

(c) In every case where a representative's fee is desired, an application for approval of the fee shall be made to the Office. The application should be made when the representative has submitted the final piece of information believed

necessary for the adjudication of the claim. Each request for approval of a fee shall be accompanied by a complete itemized statement, in duplicate, describing the services rendered. Such itemization shall contain the following information:

(1) The dates that services began and ended in addition to all dates on which conferences were held, documents or letters prepared, telephone calls made, etc.

(2) A description of each service rendered with the amount of time spent on each type of service.

(3) The amount of the fee which the representative desires for services performed.

(4) The amount of fees requested, charged or received for services rendered on behalf of the claimant before any State or Federal court or agency, in a similar or related matter.

(5) A statement explaining the basis for the amount of the fee requested.

(d) The representative shall arrange for the claimant to review the request for a fee and to comment as to the services provided and as to the reasonableness of the fee. The claimant's written comments should accompany the application for approval of a fee submitted to the Office.

(e) In considering any request for such a fee, the Office will not recognize such items as:

(1) Work performed before any other State or Federal agency or court including the Employees' Compensation Appeals Board, and any State or Federal Court.

(2) Any contract for the payment of an agreed sum or any contingent contract.

(3) Expenses incurred by the representative for services performed.

(f) The Office will not pay or assist in the collection of any representative fee. Neither will compensation payments be routinely forwarded to the representative with or without the claimant's approval.

(g) Any claimant aggrieved or adversely affected by an award of a fee may request a hearing or reconsideration by the Office, or may request review by the Employees' Compensation Appeals Board.

(h) A representative aggrieved or adversely affected by an award of a fee may request review by the Employees' Compensation Appeals Board.

(i) Any person who receives a fee, other consideration or gratuity on account of services rendered with respect to a claim under this part, unless approved by the Office, or who solicits employment for himself or another in respect to a case or claim under (or to be brought under) this Act shall be guilty of a misdemeanor under 18 U.S.C. 292 and upon conviction of each offense, will be punished by a fine of not more than \$1,000 or imprisoned not to exceed 1 year, or both. Utilization of an escrow deposit of funds by a representative for the deposit of a client's funds, prior to approval by the Office of the representative's fee, is not considered receipt or collection of a fee by the representative; provided, the escrow deposit of funds is one made by the claimant/client into the hands of a third party to be held by that third party until receipt of the Office's approval of the representative's fee, and then delivered by the third party to the representative in accordance with the decision of the Office and the provisions of the escrow agreement.

(Approved by the Office of Management and Budget under control number 1215-0115)

[40 FR 6877, Feb. 14, 1975, as amended at 47 FR 145, Jan. 5, 1982; 52 FR 10513, Apr. 1, 1987]

#### **§§ 10.146—10.149 [Reserved]**

#### **§ 10.150 Statement relative to substantive rules.**

(a) The principal function of the Office and its subordinate parts is that of adjudicating claims for workers' compensation. This function is quasi-judicial in character and involves the application of statutes and principles of law to resolve factual situations. This field of activity is within the specialized branch of the law generally referred to as "workers' compensation," and has its own particularized principles which have general applicability to workers' compensation statutes (State and Federal), as such statutes have certain common or underlying similarity in respect to the meaning of terms and phrases, and in respect to

scope, jurisdiction, and general basic concepts of employer liability.

(b) In the administration of the Act, the Office has one general policy, which is to follow and to adhere to the principles of workers' compensation law as stated in the opinions of the Supreme Court, the Federal Circuit Courts of Appeal, and the District Courts of the United States, as they may appropriately be applied or have been determined by the Employees' Compensation Appeals Board (ECAB) to apply in like situations arising under the Act. In addition, decisions and opinions of the judicial tribunals of the several States furnish principles of law of general applicability in the specialized field of workers' compensation, which form parts of the foundation of general principles relied upon in the application and interpretation of the Act. The Office applies the provision of the Act applicable in respect to a particular case or situation, to the extent that such provision can readily be applied without extrinsic aid, but where such aid is necessary the source thereof is the body of principles embodied in authoritative decisions of the courts and the ECAB within such well-recognized branch of the law.

#### REPRESENTATIVE PAYMENT

SOURCE: Sections 10.160 through 10.166 appear at 52 FR 10514, 10515, Apr. 1, 1987, unless otherwise noted.

#### **§ 10.160 Indications for designation of a representative payee.**

When the Office determines that a beneficiary is incapable of managing or directing the management of benefits either because of a mental or physical disability, or because of legal incompetence, or because the individual is under 18 years of age, the Office in its sole discretion may approve an individual designated or appointed to serve as the representative payee for funds due the eligible beneficiary.

#### **§ 10.161 Selection of a payee.**

(a) In approving a payee, the Office shall approve the person, agency, organization or institution which, in its judgment, will best serve the interest of the beneficiary. In making its decision the Office shall consider:

(1) The relationship of the person to the beneficiary;

(2) The amount of interest that the person shows in the welfare of the beneficiary;

(3) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;

(4) Whether the potential payee has custody of the beneficiary;

(5) Whether the potential payee is in a position to know of and to look after the needs of the beneficiary.

(b) For beneficiaries 18 years old or older, the general order of preference subject to the provisions of paragraph (a) of this section, shall be:

(1) A legal guardian, spouse or other relative who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for a beneficiary.

(c) For beneficiaries under age 18, the general order of preference subject to the provisions of paragraph (a) of this section shall be—

(1) A biological or adoptive parent who has custody of the beneficiary, or a legal guardian;

(2) A biological or adoptive parent who does not have custody of the beneficiary, but is contributing to the beneficiary's support and is demonstrating strong concern for the beneficiary's well-being;

(3) A biological or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support, but is demonstrating strong concern for the beneficiary's well-being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well-being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well-being; and

(7) An authorized social agency or custodial institution.

**§ 10.162 Responsibilities of a representative payee.**

A representative payee has a responsibility to—

(a) Spend or invest payments received only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines to be in the best interests of the beneficiary, subject to the guidelines contained in § 10.163;

(b) Notify the Office of any event that would affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits;

(c) Submit to the Office, upon its request, a written report accounting for the benefits received; and

(d) Notify the Office of any change in the payee's circumstances that would affect performance of the payee's responsibilities.

**§ 10.163 Use of benefit payments.**

To assure that the general welfare of the beneficiary is properly served, benefit payments received by a representative payee shall be used in the following manner, and in the prescribed order:

(a) Current maintenance, including costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

(b) Institutional care, including the customary charges made by the institution, as well as expenditures for those items which will aid in the beneficiary's recovery or release from the institution or expenses for personal needs which will improve the beneficiary's conditions while in the institution.

(c) Support of the beneficiary's legal dependents after current maintenance

needs or institutional care of the beneficiary are met; and

(d) Claims of creditors only if the current and reasonably foreseeable needs of the beneficiary are met.

**§ 10.164 Conservation and investment of benefit payments.**

If payments either in whole or in part are not needed for any of the purposes listed in § 10.163 of this part, they shall be conserved or invested on behalf of the beneficiary in non-speculative accounts. Conserved funds should be invested in accordance with rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary. Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. The account should provide for withdrawal upon demand without penalty. The interest and dividends, as well as all other profits, which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

**§ 10.165 Termination of representation.**

The services of a representative payee may be terminated when:

(a) The payee has not used the funds in the interests of the beneficiary as stipulated in this subpart;

(b) The payee has not discharged other responsibilities described in this subpart, or has not done so in a timely manner;

(c) The payee dies, wishes to be discharged from responsibility, or is unable to carry out the responsibilities of payee;

(d) The Office, after receipt of competent evidence, determines that the beneficiary is capable of managing his or her own funds; or

(e) A minor beneficiary attains majority.

**§ 10.166 Accounting for benefit payments.**

A representative payee is accountable for the use of benefit payments. The Office may require periodic written reports from the representative payee, and in certain cases, verification of how the funds were used. The representative payee shall keep records of how the funds were used so as to be able to furnish the following information to the Office:

- (a) The amount of benefit payments on hand at the beginning of the accounting period;
- (b) A description of how the benefit payments were used;
- (c) An accounting of the amounts of payments which were saved or invested;
- (d) The place(s) of residence of the beneficiary during the accounting period; and
- (e) The amount of the beneficiary's income from other sources during the accounting period so as to assist the Office in evaluating the use of the benefit payments.

**Subpart C—Continuation of Pay**

GENERAL

**§ 10.200 Statutory provisions.**

(a) Pub. L. 93–416, approved September 7, 1974, significantly revised the Act to provide that specified employees who file a claim for a period of wage loss caused by a traumatic injury shall be entitled, under certain circumstances, to have their regular pay continued for a period not to exceed 45 days.

(b) Continuation of pay shall be considered regular income and not compensation and unlike compensation, shall be subject to all taxes and other payroll deductions applicable to regular income.

[52 FR 10515, Apr. 1, 1987]

PROCEDURES

**§ 10.201 Right to continuation of pay.**

(a) An employee is not entitled to continuation of pay unless:

(1) The employee is one of the types of employees listed in § 10.5(a)(11)(i),

(iii), or (v), except that an individual selected pursuant to chapter 121 of title 28 and serving as a petit or grand juror but who is not otherwise an employee of the United States is not entitled to continuation of pay;

(2) The employee sustains a traumatic job-related injury;

(3) The employee files claim for a period of wage loss, as required by 5 U.S.C. 8118(a), within 30 days of the injury on a form approved by the Secretary. (Form CA–1 may be used for this purpose.); and

(4) The employee's disability begins within 90 days of the date of injury.

(b) An employee entitled to continuation of pay shall have regular pay continued without a break in time for a period not to exceed 45 calendar days of disability, unless the right to continuation of pay is controverted and pay is terminated under § 10.203 or is terminated under § 10.204. Where the employee stops work due to the disabling effects of the injury, the 45-day period starts with the first day or shift following the date or shift of injury during which the claimant is disabled, provided the disability begins within 90 days of the occurrence of the injury. With regard to the date of injury, the employing agency will keep the employee in a pay status for any fraction of the day or shift of injury for which the employee was disabled with no "charge" to the 45-day period. If the employee stops work for a part of a day or shift other than the day or shift of injury, that day or shift will be considered one calendar day for the purpose of counting 45 days. If a disabled employee returns to work with duties other than the duties performed at the time of injury, continuation of pay is chargeable only when there has been a formal assignment to an established job which is normally paid at a lower salary and would otherwise result in loss of income to the employee. Continuation of pay must be charged against the employee's 45-day entitlement when, due to the effects of the injury upon the employee, (1) A personnel action has been taken to assign or detail the employee to an identified position for which a position description

exists which is classified at a lower salary level than that earned by the employee when injured; or (2) a personnel action has been taken to change the employee to a lower grade, or to a lower rate of basic pay. When, due to the effects of the injury, an employee is changed to a different schedule of work which results in loss of salary or premium pay (e.g., Sunday pay or night differential) authorized for the employee's normal administrative workweek, the employee is entitled to continuation of pay for such wage loss. If the employee's job-related disability continues after entitlement to continuation of pay ceases, the employee shall be entitled to receive compensation subject to the provisions of 5 U.S.C. 8117.

(c) Where an employee's pay is continued under this subpart, it shall not be interrupted as a part of a disciplinary action, nor shall it be terminated as a result of a disciplinary action which terminates employment unless final written notice of termination of employment for cause was issued to the employee prior to the date of injury.

(d) The administration and interpretation of the Act, including section 8118 of the Act, is the function of the Office. While the employing agency shall make certain preliminary decisions with respect to an employee's entitlement to pay continuation under this subpart, final determinations as to such entitlement are a function of the Office.

(e) If the Office finds that the employee is not entitled to continuation of pay after it has been paid, the payments, at the employee's option, shall be charged to annual or sick leave or considered overpayments of pay under 5 U.S.C. 5584.

(f) If the Office determines that pay has been continued at an incorrect rate, the Office shall notify the employing agency and the employee of the correct rate of pay, and the employing agency shall make the necessary adjustment.

[52 FR 10515, Apr. 1, 1987]

#### **§ 10.202 Election of annual or sick leave.**

An employee may use accumulated annual or sick leave, or such leave as may be advanced by the employing agency, instead of claiming continuation of pay; however, the time provisions of 5 U.S.C. 8117, governing the date upon which an employee's entitlement to compensation begins, do not begin to run until the use of annual or sick leave ends. The "buy back" provisions specified in § 10.310 may not be used to repurchase the leave taken while an employee was otherwise eligible for pay continuation as provided by this subpart. An election to use annual or sick leave is not irrevocable and an employee may subsequently request continuation of pay in lieu of previously requested annual or sick leave; however, such request must be made within one year of the date the leave was used or the date of the Office's approval of the claim, whichever is later. Where an employee is eligible, the employing agency shall, subject to the 45-day limitation, convert and restore the leave previously used and, if any of the 45 days of COP remains unused, shall continue pay prospectively. The use of leave may not be used to delay or extend the 45-day continuation of pay period or to otherwise affect the time limitations as provided by section 8117. Therefore, where leave is used during a period when COP is otherwise payable, and the employee does not request that such leave be converted and restored, the 45 days will be counted as though the employee had been in a continuation of pay status.

[52 FR 10516, Apr. 1, 1987]

#### **§ 10.203 Controversion by employing agency.**

(a) With respect to continuation of pay under 5 U.S.C. 8118, the employing agency shall, on the basis of information submitted by the employee, or secured on investigation, controvert a claim and terminate an employee's pay only if:

(1) The disability is caused by an occupational disease or illness; or

(2) The employee is the type employee defined by § 10.5(a)(11)(ii) or (iv), or is an individual selected pursuant to

#### § 10.204

chapter 121 of title 28 and serving as a petit or grand juror and who is not otherwise an employee of the United States;

(3) The employee is neither a citizen nor a resident of the United States or Canada; or

(4) The injury occurred off the employing agency's premises and the employee was not performing official duties; or

(5) The injury was caused by the employee's willful misconduct, or the employee's intent to kill or injure himself or herself or another person, or was proximately caused by the employee's intoxication by alcohol or illegal drugs; or

(6) A written claim for wage loss required by 5 U.S.C. 8118(a) was not filed within 30 days after the date of injury; or

(7) The employee first stopped work as a result of the injury more than 90 days following the injury; or

(8) The employee reports the injury after employment has terminated; or

(9) The employee is enrolled in the Civil Air Patrol, Peace Corps, Job Corps, Youth Conservation Corps, Work Study Programs, or another similar group.

(b) If for reasons other than those listed in paragraph (a) of this section, the agency believes the employee is not entitled to continuation of pay, the agency may controvert an employee's right to continuation of pay; however, the employee's regular pay must be continued and may not be interrupted during the 45-day period unless the controversion is sustained by the Office and the agency is so notified, or unless entitlement ceases under the provisions of § 10.204 of this subpart.

(c) To controvert a claim for continuation of pay, the employing agency shall complete the appropriate section of Form CA-1 and submit detailed information in support of the controversion to the Office.

(d) If the Office determines that the employing agency has incorrectly controverted and terminated the employee's pay, the Office shall notify the agency and the employee's pay shall be continued for a period not to exceed 45 days or as otherwise directed by the Office, and the Office shall notify the

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agency to convert periods of sick or annual leave or leave without pay to COP.

[52 FR 10515, Apr. 1, 1987]

#### § 10.204 Termination and forfeiture of continuation of pay.

(a) Where pay is continued after an employee stops work due to a disabling traumatic injury, such pay shall be terminated if:

(1) Within 10 work days after the date the employee submits claim for continuation of pay, including such claim for a recurrence of disability, the employing agency has not received prima facie medical evidence that the employee sustained a disabling traumatic injury, except that pay shall be continued without interruption in the absence of such medical evidence if investigation shows to the official superior's satisfaction that the employee sustained a disabling traumatic injury. Where medical evidence is received by the agency more than 10 work days after claim is made for continuation of pay, the agency shall continue the employee's pay retroactive to date of termination provided the medical evidence supports injury-related disability beyond the 10 work-day period, and restore to the employee's account any annual or sick leave the employee may have used during that period. The provisions of this paragraph also apply to periods of recurrent disability as described in § 10.208; or

(2) The employing agency receives evidence that the attending physician has found the employee no longer disabled (i.e., the employee can perform the duties of the position held at the time of injury); or

(3) The employing agency receives evidence that the attending physician has found the employee to be partially disabled and the employee refuses suitable work which has been offered by the agency in accordance with § 10.207, or fails to respond to such offer within 5 work days of receipt of the offer; or

(4) The employee's scheduled period of employment expires or employment is otherwise terminated, provided the date of termination of employment is established prior to the date of injury. (See also § 10.201(c)); or



(5) The employing agency receives notification from the Office that pay should be terminated; or

(6) The 45-day continuation of pay period expires.

(b) When an employee refuses to submit to or obstructs an examination required by the Office under the provisions of 5 U.S.C. 8123(a), the right to continuation of pay under this subpart may be suspended until the refusal or obstruction stops. Pay otherwise paid or payable under this subpart for the period of the refusal or obstruction may be forfeited and, where already paid, is subject to the provisions of § 10.201(e).

(c) If the Office determines that the employing agency has incorrectly terminated the employee's pay or selected an incorrect date of termination, the Office shall instruct the agency to take appropriate corrective action.

[52 FR 10516, Apr. 1, 1987]

**§ 10.205 Pay defined for continuation of pay purposes.**

(a) For a full or part-time worker, either permanent or temporary, who works the same number of hours each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the hourly pay rate on the date of injury multiplied by the number of hours worked each week, excluding overtime.

(b) For a part-time worker, either permanent or temporary, who does not work the same number of hours each week but who does work each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the average weekly earnings established by dividing the total earnings during the one year immediately preceding the date of injury, excluding overtime, by the number of weeks worked during the one year period. For the purposes of this computation, if the employee worked only a part of a workweek, such week is counted as one week.

(c) For all WAE (when actually employed), intermittent and part-time workers, either permanent or temporary, who do not work each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the average

weekly earnings established by dividing the total earnings during the one year immediately preceding the date of injury, excluding overtime, by the number of weeks worked during that one year period. For the purposes of this computation, if the employee worked only a part of a workweek, such week is counted as one week. However, the average weekly earnings may not be less than 150 times the average daily wage earned in the employment during the days employed within the one year period immediately preceding the date of injury divided by 52 weeks.

(d) Premium, Sunday and holiday pay, night and shift differential, or other extra pay shall be included when computing wages for continuation of pay, but overtime pay shall not be included.

(e) Changes in pay or salary which would have otherwise occurred during the 45-day period (e.g., promotion, within-grade increase, demotion, termination of a temporary detail, etc.) are to be reflected in the continuation of an employee's pay under this subpart, and are to take effect at the time the event would otherwise have occurred.

[52 FR 10516, Apr. 1, 1987]

**§ 10.206 Agency accounting and reporting of continuation of pay.**

(a) Pending development of a system within the Office for directly capturing and tabulating data on continuing payments to employees under 5 U.S.C. 8118, each agency and instrumentality of the United States having an employee who is in a continuation of pay status during the calendar quarter shall submit a report to the Office within 30 days after the end of each quarter (address: Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210).

(b) Quarterly reports are to include data on all continuation of pay cases paid in the quarter for only those employees who have returned to work or exceeded the 45-day period by the last pay date of the reporting agency or instrumentality during the quarter (employees who have not returned to work or exceeded the 45-day period by the

last pay date of the quarter are to be reported in the following quarter).

(c) Reported summary data for employees returning to work during the quarter is to include:

(1) Total number of employees provided such continuation of pay.

(2) Total number of workdays or shifts (full workdays) for which these employees were paid during the quarter (and the earlier quarter if return to work did not occur during such earlier quarter).

(3) Total amount paid to all employees during the quarter (and the earlier quarter if return to work did not occur during such earlier quarter).

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10517, Apr. 1, 1987]

OFFICIAL SUPERIOR'S AND  
BENEFICIARIES' RESPONSIBILITIES

**§ 10.207 Official superior's responsibility in continuation of pay cases.**

(a) Upon receiving notice that an employee has suffered an employment-related traumatic injury, an official superior shall:

(1) Promptly authorize medical care in accordance with subpart E of this part;

(2) Provide the employee with Form CA-1 for reporting the injury and upon receipt of the completed form, return to the employee the "Receipt of Notice of Injury";

(3) Fully advise the employee of the right to elect continuation of regular pay or use annual or sick leave, if the injury is disabling;

(4) Advise the employee that prima facie medical evidence of a disabling traumatic injury must be submitted to the official superior within 10 work days of the date disability begins or pay may be terminated in accordance with § 10.204(a)(1);

(5) Inform the employees whether continuation of pay will be controverted, and, if so, whether pay will be terminated and the basis for the controversion and termination of pay;

(6) Submit Form CA-1, completed by the employee and official superior, and all other available pertinent information to the Office as soon as possible, but no later than 10 work days after the official superior has received Form

CA-1. If the claim is controverted, the official superior will provide an explanation on Form CA-1 or in a separate narrative statement or both.

(b) Upon authorization of medical care, the official superior shall advise the employee of his or her obligation to return to work as soon as possible and:

(1) Where the agency has specific alternative positions available for partially disabled employees, the agency shall furnish the employee with a written description of the specific duties and physical requirements of those positions;

(2) Where, in addition to any specific alternative positions, the agency is willing to accommodate the limitations and restrictions imposed on the employee by the injury, shall so advise the employee; and

(3) Shall advise the employee of his or her responsibilities under § 10.209 of this subpart.

(c) The employing agency shall monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA-17 is provided for this purpose. Additional information or clarification may be obtained by the agency through telephone contact with the employee's attending physician provided such contact is by a physician or nurse who is an employee of the agency, or by an appropriate supervisory official.

(d) Where the employing agency is notified that the attending physician has found the employee to be partially disabled, and the employee is able to:

(1) Perform one of the specific alternative positions referred to in § 10.207(b)(1), the employing agency shall notify the employee immediately of the description of the job and its physical requirements and of the date the job will be available. To facilitate early return to work, the agency may contact the employee by telephone, but must provide written confirmation of availability as soon as possible thereafter. A complete copy of the offer, including the description of the duties of the job, the physical requirements and the date of availability, should be sent to the Office at the same time as it is sent to the employee.

(2) Perform restricted or limited duties referred to in § 10.207(b)(2), the employing agency shall determine whether duties suitable to the employee's limitations and restrictions are available, and if so, advise the employee in writing of the duties, their physical requirements and availability. To facilitate early return to work, the agency may contact the employee by telephone, but must provide written confirmation of the offer as soon as possible thereafter. A complete copy of any offer made to the employee should also be sent to the Office at the same time as it is sent to the employee.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1215-0103)

[52 FR 10517, Apr. 1, 1987]

#### **§ 10.208 Recurrence of disability.**

(a) If an employee claims a recurrence of disability, the official superior shall promptly complete Form CA-2a. The employee shall request on Form CA-2a to continue to receive regular pay or to charge the absence to sick or annual leave.

(b) Where the employee requests continuation of pay, the official superior shall continue pay if:

(1) The original claim of disability has not been denied by the Office; and

(2) Pay has not been continued for the entire 45 days; and

(3) The disability recurs within 90 days of the date the employee first returned to work following the initial period of disability.

(c) If the employee's pay has been continued for 45 days, or disability recurs more than 90 days after the employee first returns to work, the employee is entitled to compensation only, provided the claim is approved by the Office, and the employing agency may not continue regular pay. An employee who is no longer entitled to continuation of pay should file a claim for compensation on Form CA-7 or CA-8.

[52 FR 10517, Apr. 1, 1987]

#### **§ 10.209 Employee's responsibilities in continuation of pay cases.**

(a) An employee who sustains a traumatic job-related injury, or someone

acting on the employee's behalf, shall complete and submit the employee's portion of Form CA-1 to the official superior as soon as possible but no later than 30 days after the date of injury. An employee shall elect on Form CA-1 either to receive continuation of pay or use sick or annual leave while disabled for work as a result of the injury. (See § 10.201 and § 10.202.)

(b) An employee has the responsibility of submitting, or arranging for the submission of, prima facie medical evidence of a traumatic disabling injury to the employing agency within 10 work days after claiming continuation of pay. Under the provisions of § 10.204(a)(1) of this subpart, the lack of receipt of such evidence by the employing agency within that time may serve as sufficient reason for termination of continuation of pay, subject to reinstatement upon receipt of such evidence.

(c) Where the agency has advised of the existence of specific alternative positions, the employee shall furnish the description of such alternative positions to the attending physician and inquire whether and when the employee will be able to perform such duties. The employee must furnish the employing agency with a copy of the physician's response.

(d) Where the agency has advised of its willingness to accommodate where possible the employee's work limitations and restrictions, the employee shall so advise the attending physician and request the attending physician to specify the limitations and restrictions imposed by the injury. The employee has the responsibility to advise the employing agency immediately of the limitations and restrictions imposed.

(e) Where an employee has been offered duties within the limitations and restrictions imposed by the physician, the employee is obligated to return to duty. Where an employee refuses such an offer of suitable work, entitlement to continuation of pay ceases as of the effective date of availability of such work.

(f) Where the Office determines that, due to the failure of the employee to meet his or her obligations and responsibilities under this section, pay was continued beyond the date it would

otherwise have terminated, the Office will advise the official superior and the employee of the period of disability which is approved, and the official superior may require the employee to resolve any overpayment in accordance with § 10.201(e) of this subpart.

(g) Where return to suitable work results in a loss of pay such as premium pay, Sunday pay, holiday pay, night or shift differential, etc., continuation of pay will be granted for the lost elements of pay (see § 10.205(d) of this subpart).

[52 FR 10518, Apr. 1, 1987]

## Subpart D—Payment of Compensation

### COMPENSATION RATES

#### § 10.300 Maximum and minimum compensation.

(a) *Disability.* Compensation for disability may not exceed 75 percent of the monthly pay of the highest step of grade 15 of the General Schedule, except insofar as provided in paragraph (c) below. For total disability, it may not be less than 75 percent of the monthly pay of the first step of grade 2 of the General Schedule or actual pay, whichever is less.

(b) *Death.* Compensation for death is computed on a minimum pay equal to the first step of grade 2 of the General Schedule. The total compensation may not exceed the employee's pay or 75 percent of the monthly pay of the highest step of grade 15 of the General Schedule, except that compensation is allowed to exceed the employee's monthly pay if such excess is created by authorized cost of living increases.

(c) *Exclusion from maximum compensation rate.* The provisions in paragraph (a) above concerning the maximum rate of compensation do not apply to any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) or 1751(a) of title 18, and was sustained in the performance of duty.

[40 FR 6877, Feb. 14, 1975, as amended at 54 FR 52024, Dec. 20, 1989]

#### § 10.301 Temporary total disability rate.

(a) Compensation based on loss of wages is payable, subject to the provisions of 5 U.S.C. 8117, after the expiration of continuation of pay as provided by subpart C of this part or from the beginning of pay loss in all other cases.

(b) When an injured employee loses pay due to temporary total disability resulting from an injury, compensation is payable at the rate of 66⅔ percent of the pay rate established for compensation purposes. The compensation rate is increased to 75 percent when there are one or more dependents. Dependents include a wife or husband; an unmarried child under 18 years of age or if over 18, incapable of self-support, or a student (until reaching 23 years of age or completing four years of school beyond the high school level); or a wholly dependent parent. Compensation begins when the employee starts to lose pay if the injury causes permanent disability or if there is pay loss for more than 14 days, otherwise compensation begins on the fourth day after pay stops. Compensation may not be paid while an injured employee receives pay for leave or is otherwise in a continuation of pay status. The employee has the right to elect whether to receive pay for leave or to receive compensation.

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10518, Apr. 1, 1987]

#### § 10.302 Permanent total disability rate.

When the injury causes permanent total disability, an injured employee is entitled to total disability compensation until death unless the employee is medically or vocationally rehabilitated to either full or partial earning capacity. The loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes is prima facie evidence of permanent total disability. However, the presumption of permanent total disability as a result of such loss is rebuttable by evidence to the contrary, such as evidence of sustained work and earnings despite the loss. Compensation for permanent total disability is payable at the rate of 66⅔ percent of the pay rate established for

compensation purposes, or at 75 percent when there is a dependent (see § 10.301(b) of this section).

[52 FR 10518, Apr. 1, 1987]

**§ 10.303 Partial disability rate.**

(a) An injured employee who is unable to return to the position held at the time of injury (or to earn equivalent wages) but who is not totally disabled for all gainful employment is entitled to compensation computed on loss of wage-earning capacity. Compensation for partial disability is payable at 66⅔ percent (or at 75 percent if the employee has a dependent) of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity. A narrative description of the formula used by the Office to compute the compensation payable is contained in paragraph (b) of this section. In determining the compensation payable for partial disability, an employee's wage-earning capacity is determined by the employee's actual earnings if those earnings fairly and reasonably represent the wage-earning capacity. If the actual earnings do not fairly and reasonably represent the employee's wage-earning capacity or if the employee has no actual earnings, the employee's wage-earning capacity shall be determined by the Office by selection of a job after having given due regard to the nature of the employee's injury, the degree of physical impairment, the employee's usual employment, the employee's age, the employee's qualification for other employment, the availability of suitable employment, and other factors or circumstances which may affect the employee's wage-earning capacity in his or her disabled condition. The salary of such a job shall be considered the employee's wage-earning capacity. The Office will not secure employment for the claimant in the position selected for establishing an earning capacity.

(b) For the purpose of describing the formula utilized by the Office for computing the compensation payable for partial disability, the following terms are defined: pay rate for compensation purposes is as defined in § 10.5(a)(20) of this part; current pay rate means "current" salary or pay rate for the job

held at the time of injury; and earnings means the claimant's actual earnings, or the salary or pay rate of the job selected by the Office as representative of the employee's wage-earning capacity. An employee's wage-earning capacity in terms of percentage is obtained by dividing the employee's earnings by the current pay rate. The comparison of earnings and "current" pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. Any convenient date may be chosen by the Office for making the comparison as long as the two wage rates are in effect on the date used for comparison. The employee's wage-earning capacity in terms of dollars is computed by multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity and the resulting dollar amount is subtracted from the pay rate for compensation purposes to obtain the employee's loss of wage-earning capacity. Compensation for partial disability is payable at the rate of 66⅔ percent (or at 75 percent if the employee has a dependent) of this loss of wage-earning capacity. The compensation payable shall be increased by applicable cost-of-living adjustments.

[52 FR 10518, Apr. 1, 1987]

**§ 10.304 Schedule compensation rate.**

(a) Compensation is provided for specified periods of time for the permanent loss or loss of use (referred to as impairment) of each of certain members, organs and functions of the body. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. The compensation for scheduled awards will equal 66⅔ percent of the employee's pay or 75 percent of the pay when there is a dependent. Compensation for loss of wage-earning capacity may be paid after the schedule expires. Proper and equitable compensation not to exceed \$3,500 may be paid for serious disfigurement of the face, head or neck if of a character likely to handicap a person in securing or maintaining employment.

(b) Authority is provided under 5 U.S.C. 8107(c)(22) to add other internal

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and external organs to the compensation schedule. Pursuant to this authority, the following is added:

|                                      | Weeks |
|--------------------------------------|-------|
| Breast (one) .....                   | 52    |
| Kidney (one) .....                   | 156   |
| Larynx .....                         | 160   |
| Lung (one) .....                     | 156   |
| Penis .....                          | 205   |
| Testicle (one) .....                 | 52    |
| Tongue .....                         | 160   |
| Ovary (one) .....                    | 52    |
| Uterus/cervix and vulva/vagina ..... | 205   |

(c) Compensation under this schedule is:

(1) Payable regardless of whether the cause of the impairment originates in part of the body other than the impaired member or organ;

(2) Payable regardless of whether the disability also involves another impairment of the body; and

(3) Payable in addition to but, with the exception of compensation for serious disfigurement of the face, head or neck, not concurrently with compensation for temporary total or temporary partial disability.

(d) The period of compensation payable under the schedule in 5 U.S.C. 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for an earlier injury if:

(1) Compensation in both cases is for impairment of the same member or function or different parts or the same member of function or for disfigurement; and

(2) The Office finds that compensation payable for the later impairment in whole or in part would duplicate the compensation payable for the pre-existing impairment.

(e) Where compensation is reduced as provided by paragraph (d) of this section, compensation for continuing wage loss starts on expiration of the schedule period as reduced.

[52 FR 10519, Apr. 1, 1987, as amended at 57 FR 15227, Apr. 27, 1992]

**§ 10.305 Attendant allowance.**

An employee who has been awarded compensation may receive an additional sum of not more than \$1,500 a month, as the Office considers necessary to pay for the service of an attendant, when the Office finds that the service of an attendant is necessary

constantly because the employee is totally blind or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of any impairment resulting from the injury making the employee so helpless as to require constant attendance.

[56 FR 47675, Sept. 20, 1991]

**§ 10.306 Eligibility for death benefits and death benefit rates.**

(a) If there is no child entitled to compensation, the employee's surviving spouse shall receive compensation equal to 50 percent of the employee's pay until death or remarriage before reaching 55 years of age. Upon remarriage, the surviving spouse will be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage. If remarriage occurs at age 55 or older, the lump sum payment will not be paid and compensation shall continue until death.

(b) If there is a child entitled to compensation, the compensation for the surviving spouse equal 45 percent of the employee's pay plus 15 percent for each child, but the total percentage may not exceed 75 percent.

(c) If there is a child entitled to compensation and no surviving spouse, compensation for one child equals 40 percent of the employee's pay. Fifteen percent will be awarded for each additional child, not to exceed 75 percent, the total amount to be shared equally among all children.

(d) Parents, brothers, sisters, grandparents and grandchildren dependent upon the deceased employee at the time of death may be entitled to compensation as provided by 5 U.S.C. 8133.

(e) A child, brother, sister or grandchild may be entitled to receive death benefits until death, marriage, or the attainment of age 18. Regarding entitlement after reaching age 18, refer to § 10.127 of this part.

[52 FR 10519, Apr. 1, 1987, as amended at 56 FR 47675, Sept. 20, 1991]

**§ 10.307 Burial and transportation benefits.**

In the case of an employment related death of an employee a sum, not to exceed \$800, may be paid for funeral and burial expenses. When an employee's home is within the United States, an additional sum may be paid for transporting the remains to the home if the employee dies away from home, official duty station, or outside the United States. An additional sum of \$200 is paid to the personal representative of the decedent for reimbursement of the costs of termination of the decedent's status as an employee of the United States.

[40 FR 6877, Feb. 14, 1975. Redesignated at 52 FR 10519, Apr. 1, 1987]

## ADJUSTMENTS TO BENEFITS

**§ 10.310 Buy back of annual or sick leave.**

(a) An employee who sustains a job-related disability may use sick or annual leave or both to avoid interruption of income. If the employee uses leave during a period of disability caused by an occupational disease or illness, and a claim for compensation is approved, the employee may, with the approval of the employing agency, "buy back" the used leave and have it recredited to the employee's account. If the employee uses leave during a period of disability caused by a traumatic injury and a claim is approved by the Office, the employee may "buy back" leave taken after the 45-day continuation of pay period. The employee may not repurchase leave taken during the 45-day continuation of pay period unless the employee was not entitled to receive continuation of pay. The computation of the amount due the agency to effect the leave repurchase is the responsibility of the employing agency and is to be done in accordance with the accounting principles and practices of that agency.

(b) If the employing agency does not approve a repurchase of leave, then no compensation may be paid for the period leave was used. Where the agency agrees to the leave repurchase, the employee may elect to have the compensation payable for the period paid directly to the employing agency to be

applied against the amount due the agency to effect the repurchase.

[52 FR 10519, Apr. 1, 1987]

**§ 10.311 Lump-sum awards.**

(a)(1) In exercise of the discretion afforded by section 8135(a), the Director has determined that lump-sum payments will no longer be made to individuals whose injury in the performance of duty as a federal employee has resulted in a loss of wage-earning capacity. This determination is based on, among other factors:

(i) The fact that FECA is intended as a wage-loss replacement program;

(ii) The general advisability that such benefits be provided on a periodic basis; and

(iii) The high cost associated with the long-term borrowing that is necessary to pay out large lump sums.

(2) Accordingly, where applications for lump-sum payments for wage-loss benefits under sections 8105 and 8106 are received, the Director will not exercise further discretion in the matter.

(b) Notwithstanding the determination set forth in paragraph (a) of this section, a lump sum payment may be made to a claimant whose injury entitles him or her to a schedule award under section 8107. Even under these circumstances, a claimant possesses no absolute right to a lump-sum payment of benefits payable under section 8107, and such a payment may be granted only where the Director determines, acting within his or her discretion, that such a payment is in the claimant's best interest. Lump-sum payments of schedule awards generally will not be considered in the claimant's best interest where the compensation payments are relied upon by the claimant as a substitute for lost wages.

(c) On remarriage before age 55, a surviving spouse entitled to compensation under 5 U.S.C. 8133, shall be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage.

[57 FR 35755, Aug. 11, 1992]

**§ 10.312 Assignment of claim, claims of creditors.**

An assignment of a claim for compensation is void. Compensation and claims for compensation are exempt from claims of creditors.

**§ 10.313 Dual benefits.**

(a) Except as otherwise provided by law, a person may not concurrently receive compensation pursuant to the Act and a retirement or survivor annuity under the U.S. Civil Service Retirement Act, the Federal Employees' Retirement System Act, or a retirement or survivor annuity which stands in lieu of either of these Acts, such as Foreign Service or Central Intelligence Agency disability and retirement programs. Such beneficiary shall elect the benefit which he or she wishes to receive, and such election, once made, is revocable.

(b) *Military retirement/retainer pay and compensation.* An employee may receive compensation concurrently with military retired pay, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with 5 U.S.C. 5532(b).

(c) The Office may require an employee to submit an affidavit or statement as to the receipt of any federally funded or federally assisted benefits, as identified and in the manner and at the times specified by the Office, in order to determine the employee's entitlement to compensation or to determine whether the employee is receiving benefits under other programs administered by the Office. If an employee when required, fails within 30 days of the date of the request to submit such affidavit or statement, the employee's right to compensation otherwise payable shall be suspended until such time as the requested affidavit or report is received, at which time compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such compensation.

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10520, Apr. 1, 1987]

**§ 10.314 Cost-of-living adjustments.**

(a) Cost-of-living adjustments shall be made from time to time in accordance with 5 U.S.C. 8146a.

(b) Compensation payable on account of disability or death which occurred more than one year before the effective date of the cost-of-living adjustment shall be increased as determined in accordance with 5 U.S.C. 8146a. In disability cases, a beneficiary is eligible for cost-of-living adjustments where injury-related disability began more than one year prior to the effective date of the adjustment without regard to the fact that for any part of that period of disability the beneficiary may have elected to receive continuation of pay as provided by 5 U.S.C. 8118, or to use sick or annual leave. Where an injury does not result in disability but compensation is payable pursuant to 5 U.S.C. 8107 for permanent impairment of a covered member or function of the body, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the effective date of the award for such impairment. In the case of a recurrence of disability where the pay rate for compensation purposes is the pay rate at the time disability recurs, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the disability recurs. In death cases, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the date of death. However, if the death was preceded by a period of injury-related disability, compensation payable to the survivors will be increased by the same percentages as the cost-of-living adjustments paid or payable to the deceased employee for the period of disability, as well as by subsequent cost-of-living adjustments to which the survivors would otherwise be entitled.

[52 FR 10520, Apr. 1, 1987]

OVERPAYMENTS

SOURCE: Sections 10.320 through 10.324 appear at 52 FR 10520–10522, Apr. 1, 1987, unless otherwise noted.



**§ 10.320 Definitions.**

(a) *Fault* as used in the term “without fault” in 5 U.S.C. 8129(b) and § 10.321(c) of this subpart applies only to the individual who has received a payment in his or her own name or on behalf of a beneficiary. Although the Office may have been at fault in making the overpayment, that fact does not relieve the overpaid individual or any other individual from whom the Office seeks to recover the overpayment from liability for repayment if such individual is not without fault.

(b) *With fault*. In determining whether an individual is with fault, the Office will consider all pertinent circumstances, including age, intelligence, education, and physical and mental condition. An individual is with fault in the creation of an overpayment who:

(1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or

(2) Failed to furnish information which the individual knew or should have known to be material; or

(3) With respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.

(c) *Without fault*. Whether an individual is “without fault” depends on all the circumstances surrounding the overpayment in the particular case. The Office will consider the individual's understanding of any reporting requirements, the agreement to report events affecting payments, knowledge of the occurrence of events that should have been reported, efforts to comply with the reporting requirements, opportunities to comply with the reporting requirements, understanding of the obligation to return payments which were not due, and ability to comply with any reporting requirements (e.g., age, comprehension, memory, physical and mental condition). Although “without fault” is not limited to the overpayment circumstances described below, an individual is “without fault,” except as provided in paragraph (b) above, if it is established after consideration of all the factors stated above that failure to report an event that would affect compensation benefits or

acceptance of an incorrect payment was due to one of the following:

(1) The individual relied on misinformation given to him or her (or his or her representative) by an official source within the Office (or other governmental agency which the individual had reason to believe was connected with the administration of benefits) as to the interpretation of a pertinent provision of the Act or the regulations pertaining thereto; or

(2) The Office erred in calculation of cost-of-living increases, schedule award length and/or percentage, and loss of wage earning capacity, unless the claimant had knowledge of the calculation errors.

(d) *Degree of care*. An individual will be “with fault” if the Office has evidence which shows either a lack of good faith or failure to exercise a high degree of care in reporting changes in circumstances which may affect entitlement to or the amount of benefits. As indicated in paragraphs (b) and (c) of this section, the degree of care expected of an individual may vary with the complexity of the circumstances giving rise to the overpayment and the capacity of the particular payee to realize that he or she is being overpaid. Accordingly, variances in the personal circumstances and situations of individual payees are to be considered in determining whether the individual exercised the degree of care necessary to warrant a finding of “without fault.”

**§ 10.321 Recovery of overpayments.**

(a) Whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation, having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any resulting hardship upon such individual. In the event such individual dies before such adjustment has been completed, a similar adjustment shall be made by decreasing subsequent payments, if any, payable under this Act with respect to such individual's death.

(b) Where there are no further payments due and an overpayment has

been made to an individual by reason of an error of fact or law such individual, as soon as the mistake is discovered or his attention is called to same, shall refund to the Office any amount so paid or, upon failure to make such refund, the Office may proceed to recover the same.

(c) There shall be no adjustment or recovery under paragraph (a) or (b) of this section by the United States in any case when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.

(d) Before adjusting future payments or otherwise seeking to recover an overpayment, the Office shall provide the individual with written notice of:

(1) The fact and amount of overpayment;

(2) Its preliminary finding of whether the individual is at fault in the creation of the overpayment;

(3) The individual's right to inspect and copy Government records relating to the overpayment;

(4) The individual's right to request a pre-recoupment hearing within 30 days of the date of written notice of overpayment for the purpose of challenging the fact or amount of the overpayment, the preliminary finding of fault, or for the purpose of requesting waiver;

(5) The individual's right to submit additional written evidence within 30 days of the date of written notice of overpayment for the purpose of challenging the fact or amount of the overpayment, the preliminary fault finding, or for the purpose of requesting waiver.

(e) Additional evidence must be submitted, or a pre-recoupment hearing requested, within 30 days of the Office's written notice to the individual. Failure to exercise the right to a pre-recoupment hearing within 30 days of the date of notice of overpayment shall constitute a waiver of that right.

(f) Pre-recoupment hearings shall be conducted in all matters in exactly the same manner as provided in §10.131 through §10.137.

(g) When an overpayment exists because a claim was accepted in error, or because benefits were otherwise denied

or terminated, the Office representative shall determine any and all issues raised at the pre-recoupment hearing, including those regarding the correctness of the decision to deny or terminate compensation. If an employee requests a pre-recoupment hearing as provided by this section with respect to an overpayment, and also requests a hearing as provided by 5 U.S.C. 8124(b) with respect to the decision denying or terminating benefits and resulting in the overpayment, both requests for a hearing shall be combined and one hearing held on any and all issues.

(h) If additional written evidence is not submitted, or a hearing requested, within the 30-day period, the Office will issue a final decision based on the available evidence and will initiate appropriate collection action. The final decision concerning an overpayment, whether rendered subsequent to a pre-recoupment hearing or in the absence of the submission of additional written evidence, is not subject to the hearing provision of 5 U.S.C. 8124(b) nor the reconsideration provision of 5 U.S.C. 8128(a). An individual aggrieved or adversely affected by a decision concerning an overpayment may request review by the Employees' Compensation Appeals Board.

(i) A copy of the final decision concerning an overpayment will be sent to the individual from whom recovery is sought, the individual's representative, and the employing agency.

[40 FR 6877, Feb. 14, 1975, as amended at 53 FR 11594, Apr. 7, 1988]

**§ 10.322 Waiver of recovery—defeat the purpose of the subchapter.**

(a) *General.* Recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses under the criteria set out in this section. Recovery will defeat the purpose of this subchapter to the extent that:

(1) The individual from whom recovery is sought needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

(2) The individual's assets do not exceed the resource base of \$3000 for an individual or \$5000 for an individual with a spouse or one dependent plus \$600 for each additional dependent. This base includes all of the claimant's assets not exempted from recoupment in paragraph (d) of this section. The first \$3000 or more depending on the number of the claimant's dependents is also exempted from recoupment.

(b) *Income.* The individual's total income includes any funds which may be reasonably considered available for his or her use, regardless of the source. Income to a spouse will not be considered available to the individual unless the spouse was living in the household both at the time the overpayment was incurred and at the time waiver is considered. Types of income include but are not limited to:

(1) Government benefits such as Black Lung, Social Security, and Unemployment Compensation benefits;

(2) Wages and self-employment income;

(3) Regular payments such as rent or pensions; and

(4) Investment income.

(c) *Ordinary and necessary living expenses.* An individual's ordinary and necessary living expenses include:

(1) Fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, transportation, insurance (e.g., life, accident, and health insurance);

(2) Medical, hospitalization, and other similar expenses;

(3) Expenses for the support of others for whom the individual is responsible.

(4) Church and charitable contributions made on regular basis. (This shall not include large one-time gifts made after receipt of the preliminary notice of overpayment); and

(5) Miscellaneous expenses (e.g., newspaper, haircuts) not to exceed \$25.00 per month.

(d) *Assets.* An individual's assets include:

(1) Liquid assets—cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and the like; and

(2) Non-liquid assets—the fair market value of property such as a camper, second home, extra automobile, jewelry, etc.

Assets for these purposes shall not include the value of household furnishings, wearing apparel, family automobile, burial plot or prepaid burial contract, a home which the person maintains as the principal family domicile, or income producing property if the income from such property has been included in comparing income and expenses.

#### **§ 10.323 Waiver of recovery—against equity and good conscience.**

(a) Recovery of an overpayment is considered to be "against equity and good conscience" when an individual presently or formerly entitled to benefits would experience severe financial hardship in attempting to repay the debt. The criteria to be applied in determining severe financial hardship are the same as in § 10.322.

(b) Recovery of an overpayment is considered to be inequitable and against good conscience when an individual, in reliance on such payments or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse. In making such a decision, the individual's present ability to repay the overpayment is not considered. To establish that a valuable right has been relinquished, it must be shown that the right was in fact, valuable; that it cannot be regained; and that the action was based chiefly or solely on reliance on the payments or on the notice of payment. To establish that the individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss. An example of such "detrimental reliance" would be a decision to enroll in college based on the award of benefits. The funds have been spent and cannot be recovered nor can the purchase be liquidated.

#### **§ 10.324 Responsibility for providing financial information.**

In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial information described in § 10.322, as well as

such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in denial of waiver, and no further requests for waiver shall be entertained until such time as the requested information is furnished.

### Subpart E—Furnishing Medical Treatment

#### § 10.400 Physician and medical services, etc. defined.

(a) The term “physician” as used in subparts E and F of this part includes physicians (M.D. and D.O.), surgeons, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, within the scope of their practice as defined by State Law. The term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. A physician whose license to practice medicine has been suspended or revoked by a State licensing or regulatory authority is not a physician within the meaning of this section during the period of such suspension or revocation.

(b) The term “duly qualified physician” as used in subparts E and F of this part includes any physician, as defined by paragraph (a) of this section, who has not been excluded under the provisions of subpart F of this part. Except as otherwise provided by regulation, a duly qualified physician shall be deemed to be designated or approved by the Office.

(c) The term “duly qualified hospital” as used in subparts E and F of this part includes any hospital licensed as such under State law which has not been excluded under the provisions of subpart F of this part. Except as otherwise provided by regulation, a duly qualified hospital shall be deemed to be designated or approved by the Office.

(d) The term “duly qualified provider of medical support services or supplies” as used in subparts E and F of this part includes any person, other than a physician or a hospital, who provides services, drugs, supplies, and appliances for which the Office makes

payment who possesses any applicable licenses required under State law and who has not been excluded under the provisions of subpart F of this part.

(e) The term “medical services” as used in subparts E and F of this part includes services and supplies provided by or under the supervision of physicians (M.D. and D.O.), surgeons, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, within the scope of their practices as defined by State law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-rays to exist. Also included for payment or reimbursement are physical examinations (and related laboratory tests) and x-rays performed by or required by a chiropractor to diagnose a subluxation of the spinal column. The term “subluxation” means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays. A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section.

(f) The term “hospital services” as used in subparts E and F of this part includes services and supplies provided by hospitals within the scope of their practice as defined by State law.

(g) The term “medical support services and supplies” as used in subparts E and F of this part includes services, drugs, supplies, and appliances provided by a person other than a physician or hospital.

(h) The term “job-related injury” as used in subparts E and F of this part includes injuries sustained while in the performance of duty and diseases proximately caused by the conditions of employment.

(i) The term “designated agency official” means the individual delegated responsibility by an employing agency for authorizing medical treatment for the injured employee.

[49 FR 18978, May 3, 1984, as amended at 52 FR 10520, Apr. 1, 1987]

**§ 10.401 Medical treatment, hospital services, transportation, etc.**

(a) A claimant shall be entitled to receive all medical services, appliances or supplies which are prescribed or recommended by a duly qualified physician and which the Office considers necessary for the treatment of a job-related injury, whether or not the claimant is disabled. Such services, appliances and supplies may be furnished by, or on the order or recommendation of, either United States medical officers or hospitals, or, at the claimant's option as provided in paragraph (b) of this section, any other duly qualified physician or duly qualified hospital. Medical support services and supplies not furnished by a duly qualified physician or a duly qualified hospital shall be furnished by a duly qualified provider of medical support services or supplies. A claimant shall also be entitled to reimbursement of reasonable and necessary expenses, including transportation incident to obtaining authorized medical services, appliances or supplies.

(b) A claimant has an initial choice of physicians. The designated agency official shall give the claimant an opportunity to select a duly qualified physician, after advising the claimant of those physicians excluded under the provisions of this part. An employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown for the request. Any duly qualified physician shall be authorized to provide necessary treatment of a job-related injury in an emergency. See also § 10.456(c).

(c) The medical facilities of the U.S. Public Health Service, Army, Navy, Air Force, and Veterans Administration may be used when previous arrangements have been made on a case-by-case basis with the director of the facility.

(d) Federal health service units or other occupational health service facilities established under the provisions of the Act of August 8, 1946, as amended (U.S.C. 7901), are not U.S. medical hospitals as used in this part,

nor are the staff of these facilities U.S. medical officers as used in this part.

Under criteria established by the Bureau of the Budget (now the Office of Management and Budget) in Circular No. A-72 of June 18, 1965, these health service units or occupational health service facilities shall only provide emergency diagnosis and treatment of injury or illness such as are necessary during working hours and are within the competence of the professional staff of the health service unit or facility. Any medical treatments by these units or facilities other than emergency treatment must be specifically authorized by the Office and given under the supervision of a duly qualified physician.

(e) Nothing in the Act or in these regulations affects any authority which the employing agency may have to require the employee to undergo a medical examination to determine whether the employee meets the mandatory medical requirements of the position held, or is able to perform the duties of the position held. Any agency-required examination or related activity shall not interfere with issuance of Form CA-16, with the employee's initial free choice of physician or with any authorized examination or treatment.

(f) In emergency cases or those involving unusual considerations affecting the quality of medical care, the Office may authorize treatment or approve payment of medical expenses in a matter other than that provided in this subpart.

[49 FR 18978, May 3, 1984]

**§ 10.402 Official authorization for treatment.**

(a) When an employee sustains a job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a properly executed CA-16 within 4 hours. Form CA-16 shall be used primarily for traumatic injuries. It may also be used to authorize examination and treatment for disease or illness, but only if the designated agency official has obtained prior permission from the Office.

(b) To be valid, a Form CA-16 must give the full name and address of the duly qualified physician or duly qualified medical facility authorized to provide service, and must be signed and dated by the authorizing official, and must show his or her title. Except as provided in §10.404, Form CA-16 may not be issued for past medical care. The period for which treatment is authorized by a correctly issued Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by the Office. Further, in view of the provisions of §10.401(b), the employing agency may not use Form CA-16 to authorize a change of physicians.

(c) In determining the use of medical facilities, consideration must be given to their availability, the employee's condition, and the method and means of transportation. Generally, 25 miles from the place of injury, the employing agency, or the employee's home, is a reasonable distance to travel, but other pertinent factors must also be taken into consideration.

[49 FR 18979, May 3, 1984]

**§10.403 Medical treatment in doubtful cases.**

Cases of doubtful nature, so far as compensability is concerned, shall be referred by the designated agency official to a United States medical official or hospital, or at the employee's option, to a duly qualified private physician or a duly qualified hospital designated or approved by the Office, or as otherwise provided in this part, using a Form CA-16 for medical services as indicated in 6B of the form. This authorizes the necessary diagnostic studies and emergency treatment pending receipt of advice from the Office. A statement of all pertinent facts relating to the particular case shall also be forwarded immediately to the Office for consideration. If the medical examination or other information received subsequent to the issuance of authorization for treatment discloses that the condition for which treatment was rendered is not due to an injury, the person issuing the authorization shall immediately notify the employee and the physician or hospital that no further treatment shall be rendered at the expense of the Office. In cases of an emer-

gency or cases involving unusual circumstances, the Office may, in the exercise of its discretion, authorize treatment otherwise than as provided for in this part, or it may approve payment for medical expenses incurred otherwise than as authorized in this section. No authority for examination or for medical or other treatment shall be given by the designated agency official in any case already disallowed by the Office.

[49 FR 18979, May 3, 1984]

**§10.404 Emergency treatment.**

In cases of traumatic injury where emergency treatment is necessary, any duly qualified physician may render initial treatment. If oral authorization for such treatment is given by the designated agency official, a Form CA-16 shall be issued within 48 hours thereafter. If further treatment is necessary, authorization therefor shall be requested as soon as practicable in accordance with §10.402 of this part. It is the duty of the designated agency official to authorize initial medical treatment for acute injuries, exclusive of disease or illness, and to transfer the employee at the employee's option to the care of a local U.S. medical officer or hospital or to a duly qualified private physician or a duly qualified hospital designated or approved by the Office for any subsequent treatment needed. If unable to comply promptly with this requirement, the designated agency official shall communicate with the Office for instructions.

[49 FR 18979, May 3, 1984]

**§10.405 Medical treatment if symptoms or disability recur.**

If, after having been discharged from medical treatment, an injured employee again has symptoms or disability under circumstances from which it may reasonably be inferred that such symptoms or disability are the result of an injury previously recognized as compensable by the Office, and the place of employment is the same as at the time of injury, Form CA-16 may be issued at the discretion of the designated agency official. Form CA-16 shall not be used by the designated agency official if more than six months

have elapsed since the employee last returned to work. In any case in which there may be doubt that the symptoms or disability are the result of the injury, or in which it has been more than six months since the last return to work, the designated agency official shall communicate with the Office and request instructions, stating all the pertinent facts. In all other cases, the employee shall communicate with the Office and request such treatment.

[49 FR 18979, May 3, 1984]

**§ 10.406 Authority for dental treatment.**

All necessary dental treatment, including repairs to natural teeth, false teeth, and other prosthetic dental devices, needed to repair damage or loss caused by an employment related injury shall be obtained at the employee's option from a U.S. Medical Officer or hospital, or from a duly qualified private dentist, a duly qualified physician, or a duly qualified hospital, upon authorization obtained in advance from the Office.

[49 FR 18980, May 3, 1984]

**§ 10.407 Medical examinations.**

(a) An injured employee shall be required to submit to examination by a U.S. Medical Officer or by a qualified private physician approved by the Office as frequently and at such times and places as in the opinion of the Office may be reasonably necessary. The injured employee may have a duly qualified physician, paid by him or her, present at the time of such examination. For any examination required by the Office, an injured employee shall be paid all expenses incident to such examination which, in the opinion of the Office, are necessary and reasonable, including transportation and actual loss of wages incurred in order to submit to the examination authorized by the Office.

(b) If the employee refuses to submit himself or herself for or in any way obstructs any examination required by the Office pursuant to paragraph (a) of this section, the employee's right to compensation under the Act shall be suspended until such refusal or obstruction ceases. Compensation other-

wise paid or payable under the Act and this part for the period of the refusal or obstruction is forfeited and, where already paid, is subject to recovery pursuant to 5 U.S.C. 8129. When notifying an employee of an examination required under paragraph (a) of this section, the Office shall inform the employee of the penalty for refusing or obstructing the examination.

[49 FR 18980, May 3, 1984]

**§ 10.408 Medical referee examination.**

If there should be a disagreement between the physician making the examination on the part of the United States and the injured employee's physician, the Office shall appoint a third physician, qualified in the appropriate speciality, who shall make an examination. The physician appointed shall be one not previously connected with the case.

**§ 10.409 Furnishing of orthopedic and prosthetic appliances, and dental work.**

When a job-related injury results in the need for an orthopedic or prosthetic appliance, such as an artificial limb, eye, or denture, as recommended by the duly qualified attending physician, written application for authority to purchase such appliance may be made to the Office. The application must include a statement from the attending physician regarding the need for the appliance, a brief description thereof, and the approximate cost.

[49 FR 18980, May 3, 1984]

**§ 10.410 Recording and submission of medical reports.**

(a) Medical officers and private physicians and hospitals shall keep adequate records of all cases treated by them under the Act so as to be able to supply the Office with a history of the employee's accident, the exact description, nature, location, and extent of injury, the X-ray findings or other studies, if X-ray examination or other studies have been made, the nature of the treatment rendered, and the degree of impairment arising from the injury.

(b) Form CA-16 provides for the furnishing of the initial medical report. Form CA-20 may also be used for the

initial report and for subsequent report. The medical report Form CA-20a attached to Form CA-8 is to be utilized in instances where continued compensation is claimed on such form. These reports shall be forwarded promptly to the Office. In cases of disabling traumatic injuries Form CA-17 shall be used to obtain interim reports concerning the employee's duty status. These reports are necessary to support continuation of pay up to 45 days.

(c) Detailed supplementary reports in narrative form shall be made by the physician at approximately monthly intervals in all cases of serious injury or disease, especially injuries of the head and back, and including all cases requiring hospital treatment or prolonged care. The supplementary report shall show the date the employee was first examined or treated, the patient's complaint, the condition found on examination, the diagnosis and medical opinion as to any relationship between the impairment and the injury or employment factors alleged, report as to any other impairments found not due to injury, the treatment given or recommended for the injury alleged, the extent of impairment affecting the employment as a result of the injury, the actual degree of loss of active or passive motion of an injured member, the amount of atrophy or deformity in a member, the decrease, if any, in strength, the disturbance of sensation, the prognosis for recovery, and all other material findings. If the services of a specialist are required in the examination or treatment of the employee, a report of his findings upon examination, his diagnosis, his opinion as to the relationship between the impairment and the injury and/or conditions of employment, the medical rationale for his opinion, the treatment recommended by him, a statement of the extent of impairment as a result of the injury or employment and the prognosis shall be forwarded to the Office for consideration in conjunction with other reports. The requirement of this section or of any section in this part with respect to the form of medical, dental, hospital or other reports may be waived by the Office.

[40 FR 6877, Feb. 14, 1975, as amended at 49 FR 18980, May 3, 1984]

**§ 10.411 Submission of bills for medical services, appliances and supplies; limitation on payment for services.**

(a)(1) All charges for medical and surgical treatment, appliances or supplies furnished to injured employees, except for treatment and supplies provided by hospitals, pharmacies and nursing homes, shall be supported by medical evidence as provided in § 10.410, itemized by the physician or provider on the American Medical Association standard "Health Insurance Claim Form," OWCP 1500a "Instructions for Completing Health Insurance Claim Form," and shall be forwarded promptly to the Office for consideration. The provider of such service shall identify each service performed, using the Health Care Financing Administration Common Procedure Coding System (HCPCS as periodically revised), with brief narrative description or, where no code is applicable, a detailed description of services performed. The provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the "International Classification of Disease, 9th Edition, Clinical Modification" (ICD-9-CM). A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the work-related condition is necessary for more than 30 days.

(2) Charges for medical and surgical treatment provided by hospitals shall be supported by medical evidence as provided in § 10.410. Such charges shall be submitted by the provider on the Uniform Bill (UB-82). The provider shall identify each outpatient radiology service (including diagnostic and therapeutic radiology, nuclear medicine and CAT scan procedures, magnetic resonance imaging, and ultrasound and other imaging services), outpatient pathology service (including automated, multichannel tests, panels, urinalysis, chemistry and toxicology, hematology, microbiology, immunology and anatomic pathology), and physical therapy service performed, using HCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services should also appear in the UB-82. Other outpatient hospital services for which



HCPCS/CPT codes exist shall also be coded individually using the aforementioned coding scheme. Services for which there are no HCPCS/CPT codes available can be presented using the Revenue Center Codes (RCCs) described in the "National Uniform Billing, Data Elements specifications, current edition." The provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the "International Classification of Diseases, 9th Edition, Clinical Modification" (ICD-9-CM). If the outpatient hospital services include surgical and/or invasive procedures, the provider shall state each procedure and furnish the corresponding code using the "International Classification of Diseases—Procedures, 9th Edition, Clinical Modification."

(3) Charges for appliances, supplies or services provided by pharmacies and nursing homes shall be itemized on the provider's billhead stationery or a standard form and forwarded promptly to the Office for consideration. Bills for prescription drugs must include the generic or trade name of the drug provided, the prescription number, and the date the prescription was filled.

(b) By submitting a bill and/or accepting payment, the physician or other medical provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the physician or other provider thereby agrees to comply with all rules and regulations set forth in this subchapter concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

(c) Bills submitted by providers which are not itemized on the American Medical Association "Health Insurance Claim Form" (for physicians) or the Uniform Bill (UB-82) (for hospitals), or are not signed by the provider and the claimant, or on which procedure are not identified by the provider using HCPCS/CPT codes or RCCs, or on which diagnoses and/or surgical procedures are not identified using ICD-9-CM codes, may be returned to the provider for correction and resubmission.

(d)(1) Payment for medical and other health services furnished by physicians, hospitals and other persons for work-connected injuries shall, except as provided below, be no greater than a maximum allowable charge for such service as determined by the Director. The schedule of maximum allowable charges is not applicable to charges for appliances, supplies, services or treatment provided and billed for by hospitals for services rendered on an inpatient basis, pharmacies or nursing homes, but is applicable to charges for services or treatment furnished by a physician or other medical professional in a hospital or nursing home setting. The schedule of maximum allowable charges is also not applicable to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service, the Departments of the Army, Navy and Air Force, and the Veterans Administration. The Director shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of an assignment of a value to procedures identified by HCPCS/CPT which represents the relative skill, effort, risk, and time required to perform the procedure, as compared to other procedures of the same general class; a classification of the procedure into one of the following categories: medical, surgical, pathology, radiology; an index representing the average cost of medical care per capita in the locality where service is provided, in relation to other areas, as a measure of the reasonable cost of a single service in that area; and a monetary value assignment (conversion factor) for one unit of value in each of the four categories of service. Payment for performance of a procedure identified by a HCPCS/CPT code shall not be more than the amount derived by multiplying the relative value for that procedure by the geographic index for services in that area and by the dollar amount assigned to one unit in that category of service.

(2) The "locality" which serves as a bases for determination of average cost is defined by the Bureau of Census Metropolitan Statistical Areas. The Director shall base the determination of the relative per capita cost of medical care

in a locality using information about enrollment and medical cost per county, provided by the Health Care Financing Administration (HCFA).

(3) The Director shall assign the relative value units (RVUs) published by the Health Care Finance Administration (HCFA) to all services for which HCFA has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, the Director may develop and assign any that he/she considers to be appropriate RVUs. The Director will also devise conversion factors for each category of service, and in devising such factors the Director may adapt the HCFA conversion factors as appropriate using OWCP processing experience and internal data. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for HCFA by the Urban Institute and published February 1, 1991, as *Refining the Malpractice Geographic Cost Index*, as updated or revised from time to time.

(4) Thus, if the unit value for a particular surgical procedure is 14.0, and the dollar value assigned to one unit in that category of service (surgery) is \$59.49, then the maximum allowable charge for one performance of that procedure, in a locale whose index is 1.0, would be the product of 14, 1.0, and \$59.49, or \$832.86.

(e) Where there is wide variation in the time, effort and skill required to perform a particular procedure from one occasion to the next, the Director may choose not to assign a relative value to that procedure, but the allowable charge for the procedure may be set individually based on consideration of a detailed medical report and other evidence. The Office may, at its discretion, set fees without regard to schedule limits for specially authorized consultant examinations, for examinations performed under 5 U.S.C. 8123, and for other specially authorized services.

(f) The Director shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when deemed necessary or appropriate.

(g)(1) A provider's designation of the HCPCS/CPT code to identify a procedure

being billed shall be accepted by the Office if it is consistent with medical reports and other evidence.

Where no code is supplied, the Office may determine the correct procedure code based on the narrative description of the procedure supplied on the billing form and in associated medical reports, and pay no more than the maximum allowable fee for that procedure. If the charge submitted by a provider for a treatment or service supplied to an injured employee exceeds the maximum amount determined to be reasonable according to the schedule, the Office shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. The provider shall also be notified of procedures for requesting reconsideration of the balance of the charge.

(2) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by the Director may, within 30 days, request reconsideration of the fee determination. Such request should be made to the OWCP District Office having jurisdiction over the injured employee's case, and must be accompanied by documentary evidence that the actual procedure performed was incorrectly identified by HCPCS/CPT code; that the presence of a severe or concomitant medical condition made treatment especially difficult; or that the provider possessed unusual qualifications. Board-certification in a specialty is not sufficient evidence in itself of unusual qualification to justify an exception. These are the only circumstances which will justify reevaluation of the paid amount. A list of OWCP District Offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, DC 20210. Within 30 days of receiving the request for reconsideration, the OWCP District Office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(h) If an appealed amount continues to be disallowed by the decision of the

OWCP District Office, the provider may apply, within thirty days of the date of that decision, to the Assistant Regional Administrator of the region having jurisdiction over the district office. The application may be accompanied by additional evidence. Within 60 days of receipt of the application, the Assistant Regional Administrator shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted. This decision shall be final, and shall not be subject to further review.

(i)(1) A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with these regulations shall not request reimbursement from the employee (patient) for additional amounts.

(2) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at a lower rate. A charge to an injured Federal employee for a particular service or procedure which is higher than the provider's charge to the general public for that same service or procedure will be considered a charge "substantially in excess of such provider's customary charges" for the purposes of § 10.450(d).

(3) A provider whose fee for service is partially paid by OWCP as the result of the application of its schedule of maximum allowable charges and who collects or attempts to collect from the injured employee, either directly or through a collection agent, any amount in excess of the charge allowed by the Office, and who does not cease such action or make appropriate refund to the injured employee within 60 days of the date of the decision of the Office, shall be subject to the exclusion procedures as provided by § 10.450(h).

[51 FR 8280, Mar. 10, 1986, as amended at 56 FR 1360, Jan. 14, 1991; 59 FR 8530, Feb. 23, 1994]

**§ 10.412 Reimbursement for medical expenses, transportation costs, loss of wages and incidental expenses.**

(a)(1) If bills for medical, surgical, or dental services, supplies, or appliances

have been paid for by an injured employee on account of an injury incurred in the performance of duty, an itemized bill on the American Medical Association "Health Insurance Claim Form," OWCP 1500a "Instructions for Completing Health Insurance Claim Form," together with a medical report as provided in § 10.410, may be submitted to the Office for consideration. The provider of such service shall state each diagnosed condition and furnish the applicable ICD-9-CM diagnostic code and identify each service performed using the applicable HCPCS/CPT procedure code, with a brief narrative description of the service performed, or where no code is applicable, a detailed description of that service. The bill must be accompanied by evidence that payment for the service was received from the injured employee and the amount of that payment. Acceptable evidence that payment was received includes, but is not necessarily limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the claimant's cancelled check (both front and back), or a copy of the claimant's credit card receipt.

(2) If services were provided by a hospital, pharmacy or nursing home, the bill should be submitted in accordance with the provisions of § 10.411(a)(2) or (3), as appropriate. Any request for reimbursement must be accompanied by evidence, as described in paragraph (a)(1) of this section, that payment for the service was received from the employee and the amount of that payment.

(3) These requirements may be waived by the Office if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the claimant to obtain the required information.

(b) Copies of bills shall not be paid unless they bear the original signature of the provider, with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by the Director, as set forth in § 10.411.

(c) If a claimant is only partially reimbursed for medical expenses because

the amount paid by the claimant to the physician for a service exceeds the maximum allowable charge set by the Director's schedule, the Office shall advise the provider of the maximum allowable charge for the service in question and allow the provider the opportunity to refund to the claimant, or credit to the claimant's account, the amount paid by the claimant which exceeds the maximum allowable charge, or to request reconsideration of the fee determination as provided by § 10.411 (g) and (h). Failure of the provider to make appropriate refund to the claimant, or to credit the claimant's account, within 60 days after the date of this notification by the Office, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the appealed amount, shall result in initiation of exclusion procedures as provided by § 10.450(h).

(d) After notification as provided in paragraph (c) of this section, if the amount of money paid in excess of the charge allowed by the Office is not refunded by the provider or credited to the claimant's account, the Office may make reasonable reimbursement to the claimant based on a review of the facts and circumstances of the case.

[51 FR 8282, Mar. 10, 1986]

**§ 10.413 Time limitation on payment of bills.**

The Office will reimburse claimants and providers promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the calendar year in which the claim was first accepted as compensable by the Office, whichever is later.

[52 FR 10522, Apr. 1, 1987]

**Subpart F—Exclusion of Physicians and Other Providers of Medical Services and Supplies**

SOURCE: 49 FR 18980, May 3, 1984, unless otherwise noted.

**§ 10.450 Exclusion for fraud and abuse: Grounds.**

A physician, hospital, or provider of medical support services or supplies shall be excluded from payment under the Act if such physician, hospital or provider has:

(a) Been convicted under any criminal statute for fraudulent activities in connection with any Federal or State program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any Federal or State program referred to in paragraph (a) of this section.

(c) Knowingly made or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under the Act, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a twelve-month period under this chapter containing charges which the Secretary finds to be substantially in excess of such provider's customary charges, unless the Secretary finds there is good cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse claimants for treatment, services or supplies furnished under this chapter paid by the Government;

(f) Failed, neglected or refused on three or more occasions during a twelve month period, to submit full and accurate medical reports, or to respond to requests by the Office for additional reports or information, as required by the Act and § 10.410 of this part;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the claimant's needs, or of a quality which fails to meet professionally recognized standards.

(h) Collected or attempted to collect from the claimant, either directly or through a collection agent, an amount in excess of the charge allowed by the Office for the procedure performed, and has failed or refused to make appropriate refund to the injured employee,

or to cease such collection attempts, within 60 days of the date of the decision of the Office.

[49 FR 18980, May 3, 1984, as amended at 51 FR 8282, Mar. 10, 1986]

#### **§ 10.451 Automatic exclusion.**

A physician, hospital, or provider of medical support services or supplies has been convicted of a crime described in paragraph (a) of § 10.450, or excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in paragraph (b) of § 10.450, shall be automatically excluded from participating in the program and from seeking payment under the Act for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may be by a copy thereof authenticated by the seal of the court or agency concerned. See § 10.457(a).

#### **§ 10.452 Initiation of exclusion procedures.**

(a) *General provision.* Upon receipt of information indicating that a physician, hospital or provider of medical support services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 10.450, the Assistant Regional Administrator, after completion of inquiries he/she deems appropriate, may initiate procedures to exclude the provider from participation in the FECA program. For the purposes of this section, "Assistant Regional Administrator" may include any officer designated to act on his or her behalf.

(b) *Letter of intent.* The exclusion procedure shall be initiated by sending a letter, signed by the Assistant Regional Administrator, stating his or her intention to commence proceedings to exclude the provider. The letter shall be sent by certified mail, return receipt requested and shall contain the following:

- (1) A concise statement of the grounds upon which exclusion shall be based;
- (2) A summary of the information, with supporting documentation, upon

which the Assistant Regional Administrator has relied in reaching an initial decision that exclusion proceedings should be commenced;

(3) An invitation to the provider to:

(i) Resign voluntarily from participation in the FECA program without admitting or denying the allegations presented in the letter; or

(ii) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to provide;

(4) A notice of the provider's right, in the event of an adverse ruling by the Assistant Regional Administrator, to request a formal hearing before an administrative law judge;

(5) A notice that should the provider fail to answer (as described below) the letter of intent within 30 calendar days of receipt, the Assistant Regional Administrator may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(6) The name and address of the official representative of the Office who shall be responsible for receiving the answer from the respondent.

(c) *Answer to the letter of intent.* The provider's answer shall be in writing and shall include an answer to the Office's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(d) *Failure to answer.* Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Assistant Regional Administrator may deem the allegations made therein to be true and may order exclusion of the provider.

(e) *Inspection of the record.* By arrangement with the official representative, the provider may inspect or request copies of information in the record at any time prior to the Assistant Regional Administrator's decision.

(f) *Decision.* The Assistant Regional Administrator shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certificated mail, return receipt requested. The decision shall advise the

provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth below. The filing of a request for a hearing within the time specified shall operate to stay the effectiveness of the decision to exclude.

[49 FR 18980, May 3, 1984, as amended at 52 FR 10522, Apr. 1, 1987]

**§ 10.453 Requests for a hearing.**

(a) A request for hearing shall be sent to the official representative (see § 10.452(b)(6)) and contain:

(1) A concise notice of the issues on which the provider desires to give evidence at the hearing.

(2) Any request for a more definite statement by the Office.

(3) Any request for the presentation of oral argument or evidence.

(4) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or Federal, State or Local regulatory body.

(b) If a request for hearing is timely received by the designated official representative, the official representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing.

(2) A schedule for the prompt disposition of all preliminary matters including requests for more definite statements and for the certification of questions to advisory bodies.

(3) A scheduled hearing date not less than thirty days after the date the schedule is issued, and not less than fifteen days after the scheduled conclusion of preliminary matters, provided

that the specific time and place of the hearing may be set on ten days notice.

(c) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate "all issues" for purposes of hearing. However a specific designation of issues is required if the provider wishes to interpose affirmative defenses, or request the issuance of subpoenas or the certification of questions for an advisory opinion.

(d) The provider may make application for the issuance of subpoenas upon a showing of good cause therefore to the administrative law judge.

(e) A certification of the request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or Federal, State or local regulatory agency may be made:

(1) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(2) By the Office on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt: provided, that the opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

**§ 10.454 Hearings and recommended decision.**

(a) To the extent appropriate proceedings before the administrative law judge shall be governed by 29 CFR part 18 (promulgated July 15, 1983, at 48 FR 32538).

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response,

including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical support services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript shall become a permanent part of the official record of the proceedings.

(d) Pursuant to 5 U.S.C. 8126, the administrative law judge may:

(1) Issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Require the production of books, papers, documents, and other evidence with respect to the proceedings.

(e) At the conclusion of the hearing, the Administrative Law Judge shall issue a written decision and cause it to be served on all parties to the proceeding, their representatives and the Director.

#### § 10.455 Review by Director.

(a) *Procedure.* Any party adversely affected or aggrieved by the decision of the Administrative Law Judge may file a petition for discretionary review with the Director within 30 days after issuance of the decision. The Judge's decision, however, shall be effective on the date issued and shall not be stayed except upon order of the Director.

(b) *Review discretionary.* Review by the Director shall not be a matter of right but of the sound discretion of the Secretary.

(c) *Grounds.* Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Director;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) *Requirement.* Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations, or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the Judge had not been afforded an opportunity to pass.

(e) *Statement in opposition.* A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay action on the petition.

(f) *Scope of review.* If a petition is granted, review shall be limited to the questions raised by the petition.

(g) *Denial of petition.* A petition not granted within 20 days after receipt of the petition is deemed denied.

(h) The decision of the Director shall be final with respect to the provider's participation in the program, and shall not be subject to further review by any court or agency.

#### § 10.456 Effects of exclusion.

(a) The Office shall give notice of the exclusion of a physician, hospital, or provider of medical support services or supplies to:

(1) All OWCP district offices;

(2) All employing Federal agencies;

(3) The Health Care Financing Administration;

(4) The State or Local authority responsible for licensing or certifying the excluded party;

(5) All claimants who are known to have had treatment, services or supplies from the excluded person within the six month period immediately preceding the order of exclusion.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical support services or supplies under this subpart, the Office shall not refuse a claimant reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) Claimant could not reasonably have been expected to have known of such exclusion.

(c) A claimant who is notified that his or her attending physician has been excluded shall have a new right to select a duly qualified physician. See § 10.401(b).

**§ 10.457 Reinstatement.**

(a) If a physician, hospital, or provider of medical support services or supplies has been automatically excluded pursuant to § 10.451, the person excluded will automatically be reinstated upon notice to the Office that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude the Office from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical support services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Associate Director for Federal Employees' Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decisional process.

(d) The Associate Director shall order reinstatement only in instances where such reinstatement is clearly consistent with the ultimate goal of this subpart which is to protect the FECA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

**Subpart G—Cases Involving the Liability of a Third Party**

**§ 10.500 Prosecution of third party action by a beneficiary.**

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person or persons other than the United States to pay damages, the Office may require the beneficiary to prosecute an action for damages against the third party. When so required, the cause of action shall be prosecuted in the name of the beneficiary.

[52 FR 10522, Apr. 1, 1987]

**§ 10.501 Assignment of third party.**

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefore, the beneficiary shall, if required by the Office assign any right of action he may have to the United States. All such assignments shall be in writing and no such cause of action shall vest in the United States unless and until the assignment is accepted by the Office.

**§ 10.502 Refusal to assign or prosecute claim when required; effect.**

Refusal on the part of a beneficiary to assign his right of action to the United States or to prosecute an action in his own name when required to do so pursuant to § 10.500 or § 10.501, shall deprive the beneficiary of all rights to benefits under the Act.

**§ 10.503 Distribution of damages recovered by beneficiary.**

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon a person or persons other than the United States to pay damages and, as a result of claim brought by or settlement made by the beneficiary or by someone acting on the beneficiary's behalf, the beneficiary recovers damages or receives money or other property in satisfaction of the liability on account of that injury or death, the



proceeds of the recovery shall be applied as follows:

(a) If an attorney is employed, a reasonable attorney's fee and cost of collection, if any, shall first be deducted from the gross amount of the settlement;

(b) The beneficiary is entitled to retain one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted.

(c) There shall then be remitted to the Office the benefits which have been paid on account of the injury including payments made on account of medical treatment, transportation costs, funeral expenses, and any other payments made under the Act on account of the injury or death, but not including continuation of pay as provided by 5 U.S.C. 8118. If an attorney was employed, the amount to be remitted to the Office shall be reduced by an amount equivalent to a reasonable attorney's fee proportionate to any refund to the United States.

(d) Any surplus remaining after proper refund has been made to the Office may be retained by the beneficiary but shall be credited by the Office against future payment of benefits to which the beneficiary may be entitled under the Act on account of the same injury or death.

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10522, Apr. 1, 1987]

**§ 10.504 Distribution of damages where cause of action is assigned.**

If recovery is realized upon a cause of action assigned to the United States pursuant to 5 U.S.C. 8131, the money or other property so received shall be applied in the following manner: After deducting the amount of any payments made under the Act in respect of the injury or death on account of which the cause of action arose, and the expense of such realization or collection, which sum shall be placed to the credit of the proper fund of the Office, the surplus, if any, of such amount received shall be paid to the beneficiary and credited pro tanto upon any future payment of benefits payable to him on account of the same injury. However, the beneficiary is entitled to not less than one-fifth of the net amount of a

settlement or recovery remaining after the expenses of such realization or collection have been deducted.

**§ 10.505 Office may require beneficiary to settle or compromise third party suit.**

Where a beneficiary under the Act has commenced an action in his or her own name or has initiated such action through an administrator of a deceased person to recover damages against the third party liable for the injury or death, the Office shall, at all times, have authority to require the beneficiary or such administrator to settle or compromise such action whenever it shall determine that further prosecution of the cause of action is not warranted. Refusal on the part of such beneficiary or other person acting in the interest of the beneficiary to make such settlement or to effect such compromise when so directed shall be deemed to be sufficient cause for refusal on the part of the Office to pay or cause to be paid any benefits under the Act on account of the same injury or death, or the Office may suspend or cause to suspend the payment of benefits under the Act during the period of such refusal.

**§ 10.506 Official superior's responsibility in cases involving potential third party liability.**

If it appears that an injury or death for which benefits are payable under the Act was caused under circumstances creating a legal liability upon a person or persons other than the United States to pay damages, the official superior or other agency official shall investigate the third party aspect of the injury or death and submit a report of the findings with related documents to the Office.

[52 FR 10523, Apr. 1, 1987]

**§ 10.507 Satisfaction of the interest of the United States.**

No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or the beneficiary's designee the proceeds of any suit or settlement without first satisfying or assuring satisfaction of the interest of the United States.

[52 FR 10523, Apr. 1, 1987]

## Subpart H—Special Category Employees

SOURCE: 52 FR 10523, Apr. 1, 1987, unless otherwise noted.

### PEACE CORPS VOLUNTEERS

#### § 10.600 Definition of volunteer.

The term “volunteer” means—

- (a) A volunteer enrolled in the Peace Corps under 22 U.S.C. 2504;
- (b) A volunteer leader enrolled in the Peace Corps under 22 U.S.C. 2505; and
- (c) An applicant for enrollment as a volunteer or volunteer leader during a period of training under 22 U.S.C. 2507(a) before enrollment.

#### § 10.601 Applicability of the Act.

Except as provided by 5 U.S.C. 8142 and elsewhere in this subpart, the provisions of the Act are applicable to Peace Corps volunteers.

#### § 10.602 When disability compensation commences.

Pursuant to 5 U.S.C. 8142(b), entitlement to disability compensation payments does not commence until the day after the date of termination of the volunteer’s service.

#### § 10.603 Pay rate for compensation purposes.

- (a) The pay rate of a volunteer is the lowest step of grade 7 of the General Schedule.
- (b) The pay rate of a volunteer leader is the lowest step of grade 11 of the General Schedule.
- (c) The pay rate of a volunteer with one or more minor children as defined in 22 U.S.C. 2504 is the lowest step of grade 11 of the General Schedule.
- (d) The pay rate for compensation purposes is defined as the pay rate in effect on the date following separation, provided that it is equal to or greater than the pay rate on the date of injury, and is not subject to the provisions of 5 U.S.C. 8101(4).

#### § 10.604 Period of service as a volunteer.

The period of service of an individual as a volunteer includes any period of training under 22 U.S.C. 2507(a) before enrollment as a volunteer and the pe-

riod between enrollment as a volunteer and the termination of service as a volunteer by the President or by death or resignation.

#### § 10.605 Conditions of coverage while serving outside the United States and the District of Columbia.

(a) Any injury suffered by a volunteer during any time when the volunteer is located abroad shall be presumed to have been sustained in the performance of duty and any disease or illness contracted during such time shall be presumed to be proximately caused by the employment, except the presumption will be rebutted by evidence that:

(1) The injury or disease or illness was caused by the volunteer’s willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication by alcohol or illegal drugs of the injured volunteer; or

(2) The disease or illness is shown to have pre-existed the period of service abroad; or

(3) The disease or illness or condition claimed is either a manifestation of symptoms of or consequent to a pre-existing congenital defect or abnormality.

(b) If an injury is not presumed to have been sustained in the performance of duty as provided by paragraph (a) of this section, the volunteer has the burden of proving by the submission of substantial and probative evidence that the injury was sustained in the performance of duty with the Peace Corps.

(c) If a disease or illness or claimed condition, or episode thereof, comes within exception paragraph (a)(2) or (a)(3) of this section, the volunteer has the burden of proving by the submission of substantial, probative and reasoned medical evidence that it was proximately caused by the factors of conditions of Peace Corps service, or that the condition was materially aggravated, or accelerated or precipitated by factors of Peace Corps Service.

NON-FEDERAL LAW ENFORCEMENT  
OFFICERS**§ 10.610 Definition of a law enforcement officer.**

For purposes of this subpart, a law enforcement officer is defined as an employee of a State or local government including the governments of U.S. possessions and territories, or an employee of the United States pensioned or pensionable under sections 521-535 of title 4, District of Columbia Code, whose functions include one or more of the following:

- (a) The apprehension of persons sought for the commission of crimes, including those sought by a law enforcement agency for such commission, as well as material witnesses sought in connection with criminal cases; or
- (b) The protection or guarding of persons held for the commission of crimes or as such material witnesses; or
- (c) The prevention of the commission of crimes.

**§ 10.611 Applicability.**

Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this subpart, the provisions of the Act and subparts A, B, and D through G are applicable to law enforcement officers, as defined in § 10.610.

**§ 10.612 Conditions for eligibility.**

(a) The benefits of the Act are available as provided in 5 U.S.C. 8191 *et seq.* and this subpart to a law enforcement officer as defined in § 10.610 and his or her survivors if the Office determines that an individual on any given occasion was—

(1) A law enforcement officer and to have been engaged on a given occasion in the apprehension or attempted apprehension of any person:

- (i) For the commission of a crime against the United States, or
- (ii) Who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States, or
- (iii) Who at that time was sought as a material witness in a criminal proceeding instituted by the United States; or

(2) A law enforcement officer and to have been engaged on that occasion in

protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such crime; or

(3) A law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States;

and to have been on that occasion not an employee as defined in 5 U.S.C. 8101 (1) and to have sustained on that occasion a personal injury for which the United States would be required under 5 U.S.C. 8101 to pay compensation if the individual has been on that occasion an employee within the meaning of 5 U.S.C. 8101 (1) engaged in the performance of duty.

(b) The mere fact that an injury to a law enforcement officer is in some way related to the commission of a Federal crime does not in itself bring the injury within the scope of this subpart. For the purpose of this subpart, being engaged in the apprehension or attempted apprehension of a person for the commission of a crime against the United States requires that the specific criminal activity which caused the officer's response was an actual Federal crime. Further, where the actions which result in an injury to an officer are based solely on a local police matter, the later discovery (i.e., discovery after the arrest has been made) of a Federal crime or potential Federal crime does not in itself bring the injury within the meaning of 5 U.S.C. 8191. For example, coverage under this subpart would extend to an officer who responded to an armed robbery and who was shot by the suspect. (For the purpose of this example, the suspect must be illegally in possession of a firearm in violation of Federal law.) With the officer's knowledge of an armed robbery (and/or the actual viewing of a firearm in the possession of the suspect), the firearm would be both an integral part of a Federal crime and a part of the specific criminal activity to which the officer was reacting. Coverage would be extended in this situation even though the officer may not have been aware at the time that the suspect was in fact in violation of Federal law. However, coverage under this

subpart would not be extended to an officer injured while apprehending an individual for a violation of local law where it is discovered during a search of the individual (i.e., after the arrest has been made) that the individual was in violation of Federal law due to illegal possession of a controlled substance. In this situation, even though the individual was in violation of Federal law, the existence of the controlled substance was not a part of the specific criminal activity to which the officer was responding and thus did not play a part in the apprehension. Coverage would be extended in this situation if the officer had been aware of the existence of the substance prior to the arrest being made. To be considered a part of the criminal activity, it would not be necessary for the officer to know the nature of the substance, but only that the officer had reason to believe it was a controlled substance. If later investigation showed that the substance was not in fact a controlled substance, coverage would not be extended since no Federal crime had in fact been committed. Similarly, an officer injured while responding to an alarm of a robbery at a federally insured bank would be entitled to benefits as provided by this subpart. However, coverage would not be extended where the alarm was false since no Federal crime had actually occurred.

(c) Coverage for injuries or death while a law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States shall not attach unless a Federal crime had been committed or was about to be committed. Whether or not a Federal crime was about to be committed cannot be open to speculation. The threat must be actual and imminent. However, in situations where the officer is detailed by a competent State or local authority to assist a Federal law enforcement authority in the protection of the President of the United States, or any other individual entitled to be provided or actually provided protection by the U.S. Secret Service pursuant to 18 U.S.C. 3056(a), 3 U.S.C. 202-209, and the regulations promulgated pursuant to the latter provisions at 31

CFR 13.1-13.8, coverage will be extended for injury or death sustained in such activity, because the threat of Federal crime in those circumstances is presumed to be always imminent.

(d) No person otherwise eligible to receive a benefit under this subpart because of the disability or death of an eligible officer shall be barred from the receipt of such benefit because the person apprehended or attempted to be apprehended by such officer was then sought for the commission of a crime against a sovereignty other than the United States.

(e) Coverage for members of the U.S. Park Police and those members of the Uniformed Division of the U.S. Secret Service who are covered under the District of Columbia Policemen and Firemen's Retirement and Disability Act is limited to specific activities involving crimes against the United States, and does not include numerous tangential activities of law enforcement, such as reporting for work, changing clothing etc., even though the laws enforced in the job deal solely with crimes against the United States. However, members of the Non-Uniformed Division of the U.S. Secret Service who are covered under the District of Columbia Policemen and Firemen's Retirement and Disability Act are considered to be engaged in the types of activities specified in 5 U.S.C. 8191 (1) through (3), and are covered by the provisions of 5 U.S.C. 8191-8193 during the performance of all official duties.

**§ 10.613 Time for filing a claim.**

A claim for benefits under the Act must be received by the Office within 5 years after the injury or death. The five-year limitation is maximum and mandatory and is not subject to waiver.

**§ 10.614 How to file a notice of injury or death.**

(a) A claim for benefits due to the injury or death of an eligible officer shall be made by—

(1) Any eligible officer or survivor of an eligible officer,

(2) Any guardian, personal representative, or other person legally authorized to act on behalf of an eligible officer, his or her estate, or any of his or her survivors, or

(3) Any association of law enforcement officers which is acting on behalf of an eligible officer or any of his or her survivors.

(b) The form provided for filing a claim for injury or occupational disease is CA-721.

(c) The form provided for filing a claim for death is CA-722.

(d) A claim for benefits should be submitted to the officer's employing agency for completion and forwarding to the Office of Workers' Compensation Programs.

#### **§ 10.615 Benefits.**

(a) In the event of injury the Office shall furnish to any eligible officer the benefits, except for Continuation of Pay, to which he or she would have been entitled under subparts A through H of this part if, on the occasion giving rise to eligibility, the officer had been an employee as defined in 5 U.S.C. 8101(1) engaged in the performance of duty. However, such benefits shall be reduced or adjusted as the Secretary in his discretion may deem appropriate to reflect comparable benefits, if any, received by the officer (or which the officer would have been entitled to receive but for this subpart) by virtue of actual employment on that occasion. When an eligible officer has contributed to a disability compensation fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of disability coverage for the individual officer.

(b) In the event of death the Secretary shall pay to any survivor of an eligible officer the difference, as determined by the Secretary in his discretion, between the benefits to which that survivor would be entitled if the officer had been an employee defined in 5 U.S.C. 8101(1) engaged in the performance of duty on the occasion giving rise to eligibility, and the comparable bene-

fits, if any, received by the survivor (or which that survivor would have been entitled to receive but for this subpart) by virtue of the officer's actual employment on that occasion. When an eligible officer has contributed to a survivor's benefit fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of survivors' benefits coverage for the eligible officer.

#### **§ 10.616 Computation of benefits.**

(a) In determining the amount of benefits payable to an eligible officer or survivors of an eligible officer, the Office shall compute the beneficiaries' entitlement under the Act including applicable cost-of-living adjustments under 5 U.S.C. 8146a, then reduce the amounts by any comparable benefits payable by a State or local entity for the same injury or death.

(b) Benefits payable under the Public Safety Officers' Benefit Act (42 U.S.C. 3796) for the same death constitute a prohibited dual benefit and any benefits payable under the Act will be reduced commensurate with the amounts payable under 42 U.S.C. 3796. Where a lump sum benefit is paid under 42 U.S.C. 3796, no benefits under the Act will be paid to a beneficiary until the entire amount, or the individual beneficiaries' portions of the entire amount, has been fully recovered.

(c) Where one or more beneficiaries in a death claim is not eligible to receive compensation due to the fact that comparable benefits from a State or local program or benefits payable under another Federal program exceed what is payable to the individual(s) under the Act, no adjustment shall be made to the percentage(s) upon which compensation is computed for other beneficiaries until the happening of an event which would otherwise change the criteria for determining entitlement under the Act, e.g., death or remarriage of a spouse, a child turning 18 or marrying, or the birth of a posthumous child.

**§ 10.617 Responsibilities of the claimant, the employing agency and the Office.**

(a) The claimant, or someone acting on his or her behalf as specified in § 10.614(a), shall be responsible for fully completing all forms, or portions thereof, which require information of the claimant, as well as for providing any supporting documentation or statements requested in support of the claim for benefits.

(b) The employing law enforcement agency is responsible for fully completing all necessary portions of claim forms designated for the employing agency and for submitting evidence necessary to the Officer's determination of coverage under 5 U.S.C. 8191 including police reports, investigative reports, and records providing or disproving the involvement of a Federal crime or Federal felony.

(c) The Office is responsible for evaluating a claim, advising of the deficiencies in a claim and requesting supportive information of the claimant and employing agency. Nothing in this subpart shall be construed as placing the burden on the Office to secure the information needed to discharge the responsibilities of the claimant(s) or the employing agency.

**§ 10.618 Consultation with Attorney General and other agencies.**

The Secretary may refer any application received pursuant to this subpart to the Attorney General for assistance, comments and advice as to any determination required to be made pursuant to 5 U.S.C. 8191. The Secretary may request any Federal department or agency to supply any statistics, data or any other materials deemed necessary to carry out the functions of this subpart. Each such department or agency shall cooperate with the Secretary and, to the extent permitted by law, furnish such materials to him or her.

**§ 10.619 Cooperation with State and local agencies.**

The Secretary shall cooperate fully with the appropriate State and local officials, and shall take all other practicable measures, to assure that the benefits of this subpart and the Act are made available to eligible officers and

their survivors with a minimum of delay and difficulty.

FEDERAL GRAND AND PETIT JURORS

**§ 10.620 Definition of juror.**

The term "juror" means an individual selected pursuant to chapter 21 of title 28, United States Code, and serving as a petit or grand juror.

**§ 10.621 Applicability.**

Except as provided by 28 U.S.C. 1877 and elsewhere in the subpart, the provisions of the Act and subparts A, B, C, and D through G are applicable to Federal grand or petit jurors as defined in § 10.620.

**§ 10.622 Performance of duty.**

(a) Performance of duty as a juror includes that time when a juror is

- (1) In attendance at court pursuant to a summons,
- (2) In deliberation,
- (3) Sequestered by order of a judge, or
- (4) At a site, by order of the court, for the taking of a view.

(b) For the purposes of this subpart, a juror is not in the performance of duty while traveling to or from home in connection with the activities enumerated in paragraphs (a)(1) through (4) of this section.

**§ 10.623 When disability compensation commences.**

Pursuant to 28 U.S.C. 1877, entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.

**§ 10.624 Pay rate for compensation purposes.**

For the purpose of computing compensation payable for disability or death, a juror is deemed to receive pay at the minimum rate for grade GS-2 of the General Schedule unless his or her actual pay as a Government employee while serving on court leave is higher, in which case the pay rate for compensation purposes is determined in accordance with 5 U.S.C. 8114.

## PART 25—COMPENSATION FOR DISABILITY AND DEATH OF NON-CITIZEN FEDERAL EMPLOYEES OUTSIDE THE UNITED STATES

### Subpart A—General Provisions

Sec.

- 25.1 General statement.
- 25.2 General adoption of local law.
- 25.3 General provisions relating to special schedule.
- 25.4 Authority to settle and pay claims.
- 25.5 Applicable criteria.
- 25.6 Third and fourth country nationals.
- 25.7 Non-citizen residents of possessions.

### Subpart B—Special Schedule of Compensation

- 25.11 Compensation for disability.
- 25.12 Compensation for death.
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### Subpart C—Extensions of Special Schedule of Compensation

- 25.21 Republic of the Philippines.
- 25.22 Australia.
- 25.23—25.24 [Reserved]
- 25.25 Republic of Korea.
- 25.26 Japanese seamen.
- 25.27 Territory of Guam (nonresident aliens).

AUTHORITY: Sec. 32, 39 Stat. 749, as amended; (5 U.S.C. 8145, 8149); 1946 Reorg. Plan No. 2, sec. 3, 3 CFR 1943-1948 Comp., p. 1064; 60 Stat. 1095; 1950 Reorg. Plan No. 19, sec. 1, 3 CFR 1949-1953 Comp., p. 1010; 64 Stat. 1271, unless otherwise noted.

SOURCE: 40 FR 6891, Feb. 14, 1975, unless otherwise noted.

### Subpart A—General Provisions

#### § 25.1 General statement.

The provisions of this part shall apply in respect to compensation, under the Federal Employees' Compensation Act, payable only to employees of the United States who are neither citizens nor residents of the United States, any territory, or Canada, or payable to any dependents of such employees. It has previously been determined, pursuant to 5 U.S.C. 8137, that the amount of compensation, as provided under such Act, is substantially disproportionate to the compensation for disability or death which is payable in similar cases under local law, regulation, custom, or otherwise, in areas

outside the United States, any territory, or Canada. Therefore, in respect to cases of such employees whose injury (or injury resulting in death) has occurred subsequent to December 7, 1941, or may occur, the following provisions shall be applicable.

#### § 25.2 General adoption of local law.

(a) Pursuant to the provisions of 5 U.S.C. 8137, the benefit features of local workers' compensation laws, or provisions in the nature of workers' compensation, in effect in the areas referred to in § 25.1, shall, effective as of December 7, 1941, by adoption and adaptation, as recognized by the Director, Office of Workers' Compensation Programs, apply in the cases of the employees specified in § 25.1: *Provided, however,* That there is not established and promulgated under this part, for the particular locality, or for a class of employees in the particular locality, a special schedule of compensation for injury or death.

(b) The benefit provisions as thus adopted or adapted are those dealing with the money payments for injury and death (including provisions dealing with medical, surgical, hospital and similar treatment and care), as well as those dealing with services and purposes forming an integral part of the local plan, provided they are of a kind or character similar to services and purposes authorized by the Federal Employees' Compensation Act. Procedural provisions, designations of classes of beneficiaries in death cases, limitations (except those affecting amounts of benefit payments), and any other provisions not directly affecting the amounts of the benefit payments, in such local plans, shall not apply, but in lieu thereof the pertinent provisions of the Federal Employees' Compensation Act shall apply, unless modified by further specification in this section. However, the Director may at any time modify, limit or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives, or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(c) Compensation in all cases of such employees paid and closed prior to the effective date of the regulations in this part shall be deemed compromised and paid under 5 U.S.C. 8137; in all other cases compensation may be adjusted to conform with the regulations in this part, or the beneficiary may by compromise or agreement with the Director have compensation continued on the basis of a previous adjustment of the claim.

(d) Persons employed in a country or area having no well-defined workers' compensation benefits structure shall be accorded the benefits provided—either by local law or special schedule—in a nearby country as determined by the Director. In selecting the benefit structure to be applied, equity and administrative feasibility shall be given due consideration, as well as local custom.

(e) Compensation for disability and death of noncitizens outside the United States under this part, whether paid under local law or special schedule, shall in no event exceed that generally payable under the Federal Employees' Compensation Act.

**§ 25.3 General provisions relating to special schedule.**

The special schedule established by subpart B of this part is intended as the vehicle of general basic provisions, to be adapted, with such modifications as may be necessary, and as local conditions outside the United States require. The application of this special schedule will be by specific and appropriate provision in the regulations in this part, such provision specifying the locality to which applied, and the particular modifications of or additions to the schedule, as may be made.

**§ 25.4 Authority to settle and pay claims.**

In addition to the authority to receive, process, and pay claims, when delegated such representative or agency receiving delegation of authority shall, in respect to cases adjudicated under this part, and when so authorized by the Director, have authority (a) to make lump sum awards (in the manner prescribed by 5 U.S.C. 8135) whenever such authorized representative shall

deem such settlement to be for the best interest of the United States, and (b) to compromise and pay claims for any benefits provided for under this part, including claims in which there is a dispute as to jurisdiction or other facts, or questions of law. The Director shall, in administrative instructions to the particular representative concerned, establish such procedures in respect to action under this section as may be deemed necessary, and may specify the scope of any administrative review of such action.

**§ 25.5 Applicable criteria.**

The following criteria shall apply to cases of employees specified in § 25.1 and such cases, if otherwise compensable, shall be approved only upon evidence of the following nature without regard to the date of injury or death for which claim is made:

- (a) Appropriate certification by the Federal employing establishment, or;
- (b) An armed service's casualty or medical record, or;
- (c) Verification of the employment and casualty by military personnel, or;
- (d) Recommendation of an armed service's "Claim Service" based on investigations conducted by it.

(79 Stat. 592)

**§ 25.6 Third and fourth country nationals.**

(a) *Definitions.* (1) A third country national is a person who is neither a citizen nor resident of the United States who is hired by the United States in the person's country of citizenship or residence for employment in another foreign country, or in a possession or territory of the United States.

(2) A fourth country national is a person who is neither a citizen nor resident of either the country of hire or the place of employment, but otherwise meets the definition of third country national.

(3) "Benefits applicable to local hires" are the benefits provided in this part by local law or special schedule, as determined by the Director. In relation to a United States territory or possession, local law means only the law of the particular territory or possession.

(b) *Benefits payable.* (1) Third and fourth country nationals shall be paid



the benefits applicable to local hires in the country of hire or the place of employment, whichever benefits are greater, provided that all benefits payable on account of one injury must be paid under the same benefit structure.

(2) Where no well-defined workers' compensation benefits structure is provided in either the country of hire or the place of employment, the provisions of § 25.2(d) shall apply.

(3) Where equitable considerations as determined by the Director so warrant, a fourth country national may be awarded benefits applicable to local hires in his home country.

#### **§ 25.7 Non-citizen residents of possessions.**

An employee who is a bona fide permanent resident of any United States possession, territory, commonwealth or trust territory shall be accorded the full benefits of the basic law (Federal Employees' Compensation Act, as amended), provided that the application of the minimum benefit provisions therein shall be governed by the restrictions set forth in 5 U.S.C. 8138.

### **Subpart B—Special Schedule of Compensation**

#### **§ 25.11 Compensation for disability.**

Compensation for disability shall be paid to the employee as follows:

(a) *Permanent total disability.* In case of disability, total in character and permanent in quality, 66⅔ per centum of the monthly pay during the continuance of such disability.

(b) *Temporary total disability.* In case of disability, total in character and temporary in quality, 66⅔ per centum of the monthly pay during the continuance of such disability.

(c) *Permanent partial disability.* In case of disability, partial in character and permanent in quality, 66⅔ per centum of the monthly pay, for the following losses and periods:

(1) Arm lost, 280 weeks' compensation.

(2) Leg lost, 248 weeks' compensation.

(3) Hand lost, 212 weeks' compensation.

(4) Foot lost, 173 weeks' compensation.

(5) Eye lost, 140 weeks' compensation.

(6) Thumb lost, 51 weeks' compensation.

(7) First finger lost, 28 weeks' compensation.

(8) Great toe lost, 26 weeks' compensation.

(9) Second finger lost, 18 weeks' compensation.

(10) Third finger lost, 17 weeks' compensation.

(11) Toe, other than great toe, lost, 8 weeks' compensation.

(12) Fourth finger lost, 7 week's compensation.

(13) Loss of hearing: One ear, 52 weeks' compensation; both ears, 200 weeks' compensation.

(14) Phalanges: Compensation for loss of more than one phalanx of a digit shall be the same as for the loss of the entire digit. Compensation for loss of the first phalanx shall be one-half of the compensation for the loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for the loss of the arm or leg; but, if amputated between the elbow and the wrist, or between the knee and the ankle, the compensation shall be the same as for the loss of the hand or the foot.

(16) Binocular vision or per centum of vision: Compensation for loss of binocular vision, or for 80 per centum or more of the vision of an eye shall be the same as for the loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits, one or more phalanges of two or more digits of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for the loss of a hand or a foot.

(18) Total loss of use: Compensation for a permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss of use of the member.

(20) Consecutive awards: In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member, set forth in

paragraphs (c)(1) to (19), inclusive, of this section but not amounting to permanent total disability, the award of compensation shall be for the loss or loss of use of each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (c)(17) of this section shall apply.

(21) Other cases: In all other cases within this class of disability the compensation during the continuance of disability shall be that proportion of compensation for permanent total disability, as determined under paragraph (a) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

(22) Compensation under paragraph (c)(1) to (21), inclusive, of this section for permanent partial disability shall be in addition to any compensation for temporary total or temporary partial disability under this section, and awards for temporary total, temporary partial, and permanent partial disability shall run consecutively.

(d) *Temporary partial disability.* In case of disability, partial in character and temporary in quality, during the continuance of disability that proportion of compensation for temporary total disability, as determined under paragraph (b) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

#### **§ 25.12 Compensation for death.**

If the disability causes death the compensation shall be payable in the amount and to or for the benefit of the persons, determined as follows:

(a) To the undertaker or person entitled to reimbursement, reasonable funeral expenses not exceeding \$200.

(b) To the widow, if there is no child, 35 per centum of the monthly pay until her death or remarriage.

(c) To the widower, if there is no child and if wholly dependent for support upon the deceased employee at the time of her death, 35 per centum of the monthly pay until his death or remarriage.

(d) To the widow or widower, if there is a child, the compensation payable

under paragraph (b) or (c) of this section, and in addition thereto 10 per centum of the monthly wage for each child, not to exceed a total of 66⅔ per centum for such widow or widower and children. If a child has a guardian other than the surviving widow or widower, the compensation payable on account of such child shall be paid to such guardian. The compensation of any child shall cease when he or she dies, marries, or reaches the age of 18 years, or if over such age, and incapable of self-support, becomes capable of self-support.

(e) To the children, if there is no widow or widower, 25 per centum of such monthly pay for one child and 10 per centum thereof for each additional child, not to exceed a total of 66⅔ per centum thereof, divided among such children share and share alike. The compensation of each child shall be paid until he or she dies, marries, or reaches the age of 18, or if over such age, and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian, if there is one, otherwise to the person having the custody or care of such child, for such child, as the Director in his or her discretion shall determine.

(f) To the parents, if one is wholly dependent for support upon the deceased employee at the time of his death and the other is not dependent to any extent, 25 per centum of such monthly pay; if both are wholly dependent, 20 per centum thereof to each; if one is or both are partly dependent, a proportionate amount in the discretion of the Director. The compensation to a parent or parents in the percentages specified shall be paid if there is no widow, widower, or child, but if there is a widow, widower, or child, there shall be paid so much of such percentages for a parent or parents, as, when added to the total of the percentages of the widow, widower, and children, will not exceed a total 66⅔ per centum of such pay.

(g) To the brothers, sisters, grandparents, and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his or her death, 20 per centum of such pay to such dependent if more than one are wholly dependent; 30 per centum of

such pay, divided among such dependents share and share alike; if there is no one of them wholly dependent, but one or more are partly dependent, 10 per centum of such pay divided among such dependents share and share alike. The compensation to such beneficiaries shall be paid if there is no widow, widower, child, or dependent parent. If there is a widow, widower, child, or dependent parent, there shall be paid so much of the above percentages as, when added to the total of the percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 66⅔ per centum of such pay.

(h) The compensation of each beneficiary under paragraphs (f) and (g) of this section shall be paid until he or she, if a parent or grandparent, dies, marries, or ceases to be dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of 18 years, or if over such age and incapable of self-support becomes capable of self-support. The compensation of a brother, sister, or grandparent under legal age shall be paid to his or her guardian, if there is one, otherwise to the person having the custody or care of such child, for such child, as the Director in his or her discretion shall determine.

(i) Upon the cessation of any person's compensation for death under this subpart, the compensation of any remaining person entitled to the continuation of compensation in the same case shall be adjusted, so that the continuing compensation shall be at the same rate such person would have received, had no award been made to the person whose compensation was terminated.

(j) In case there are two or more classes of persons entitled to compensation for death under this subpart, and the apportionment of such compensation as above provided would result in injustice, the Director may in his or her discretion modify the apportionments to meet the requirements of the case.

#### § 25.13 General provisions.

(a) The definitions of terms in the Federal Employees' Compensation Act of September 7, 1916, as amended shall apply to terms used in this subpart.

(b) The provisions of such Act unless modified by this subpart, or unless otherwise inapplicable, shall be applied whenever possible in the application of this subpart.

(c) The provisions of the regulations for the administration of the Federal Employees' Compensation Act, as amended, and as supplemented from time to time by instructions applicable to this subpart, shall apply in the administration of compensation under this subpart, whenever they can reasonably be applied.

### Subpart C—Extensions of Special Schedule of Compensation

#### § 25.21 Republic of the Philippines.

(a) *Modified special schedule of compensation.* The special schedule of compensation established in subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, in the Republic of the Philippines, to injury or death occurring on or after July 1, 1968, with the following limitations:

(1) *Temporary disability.* Benefits for payments accruing on and after July 1, 1969, for injuries causing temporary disability and which occurred on and after July 1, 1968, shall be payable at the rates in the special schedule as modified in this section.

(2) *Permanent disability and death.* Benefits for injuries occurring on and after July 1, 1968, which cause permanent disability or death shall be payable at the rates specified in the special schedule as modified in this section for (i) all awards not paid in full before July 1, 1969, and (ii) any award paid in full prior to July 1, 1969: *Provided,* That application for adjustment is made, and the adjustment will result in additional benefits of at least \$10. (In the case of injuries or death occurring on or after December 8, 1941, and prior to July 1, 1968, the special schedule as modified in this section may be applied to prospective awards for permanent disability or death, provided that the monthly and aggregate maximum provisions in effect at the time of injury or death shall prevail. These maxima are \$50 and \$4,000, respectively.)

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Benefits are payable to the survivors in the following order of priority (all beneficiaries in the highest applicable cases are entitled to share equally):

(1) Widow, dependent widower, and unmarried children under 18, or over 18 and totally incapable of self-support.

(2) Dependent parents.

(3) Dependent grandparents.

(4) Dependent grandchildren, brothers and sisters who are unmarried and under 18, or over 18 and totally incapable of self-support.

(d) *Burial allowance.* 14 weeks' wages or \$400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable the compensation provided in paragraphs (c)(1) through (19) of the special schedule, subject to an aggregate limitation of 400 weeks' compensation. In all other cases, provided for permanent total disability that proportion of the compensation (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period for temporary disability.* Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed \$8,000, exclusive of medical costs and burial allowance. The weekly rate of compensation disability or death shall not exceed \$35.

(j) *Method of payment.* Only compensation for temporary disability shall be payable periodically. Compensation for permanent disability and

death shall be payable in full at the time extent of entitlement is established.

(k) *Exceptions.* The Director in his or her discretion may make exceptions to these regulations by:

(1) Reapportioning death benefits, for the sake of equity.

(2) Excluding from consideration potential death beneficiaries who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the beneficiary.

#### § 25.22 Australia.

(a) The special schedule of compensation established by subpart B of this part shall apply with the modifications or additions specified in paragraph (b) of this section, as of December 8, 1941, in Australia, in all cases of injury (or death from injury) which occurred between December 8, 1941, and December 31, 1961, inclusive, and shall be applied retrospectively in all such cases of injury (or death from injury). Compensation in all such cases pending as of July 15, 1946, shall be readjusted accordingly, with credit taken in the amount of compensation paid prior to such date. Refund of compensation shall not be required if the amount of compensation paid in any such case, otherwise than through fraud, misrepresentation, or mistake, and prior to July 15, 1946, exceeds the amount provided for under this paragraph; and such case shall be deemed compromised and paid under 5 U.S.C. 8137.

(b) The total aggregate compensation payable in any case under paragraph (a) of this section, for injury or death or both, shall not exceed the sum of \$4,000, exclusive of medical costs. The maximum monthly rate of compensation in any such case shall not exceed the sum of \$50.

(c) The benefit amounts payable under the provisions of the Commonwealth Employees' Compensation Act of 1930-1964, Australia, shall apply as of January 1, 1962, in Australia, as the exclusive measure of compensation in cases of injury (or death from injury) according on and after January 1, 1962, and shall be applied retrospectively in

all such cases, occurring on and after such date: *Provided*, That the compensation payable under the provisions of this paragraph shall in no event exceed that payable under the Federal Employees' Compensation Act.

(5 U.S.C. 8137, 8138, 8145, 8149); Reorganization Plan No. 19 of 1950 (64 Stat. 1271, 3 CFR 1949-1953 Comp., p. 1010); and General Order No. 46 (Rev.) (24 FR 8472))

#### §§ 25.23—25.24 [Reserved]

#### § 25.25 Republic of Korea.

(a) *Modified special schedule of compensation.* The special schedule of compensation established in subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section in the Republic of Korea, to injury or death occurring on or after July 1, 1968, with the following limitations:

(1) *Temporary disability.* Benefits for payments accruing on and after July 1, 1969, for injuries causing temporary disability and which occurred on and after July 1, 1968, shall be payable at the rates specified in the special schedule as modified in this section.

(2) *Permanent disability and death.* Benefits for injuries occurring on and after July 1, 1968, which cause permanent disability or death shall be payable at rates specified in the special schedule as modified in this section for (i) all awards not paid in full before July 1, 1969, and (ii) any award paid in full prior to July 1, 1969: *Provided*, That application for adjustment is made, and the adjustment will result in additional benefits of at least \$10. (In the case of injury or death occurring on or after December 1, 1954, and prior to July 1, 1968, the special schedule as modified in this section may be applied to prospective awards for permanent disability or death: *Provided*, That the monthly and aggregate maximum provisions in effect at the time of injury or death shall prevail. These maxima are \$50 and \$4,000, respectively.)

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Benefits are payable to survivor or survivors in the following order of priority:

(1) Spouse.

(2) Unmarried children who were supported by or lived with the deceased employee at the time of death.

(3) Parents who were supported by or lived with the deceased employee at the time of death.

(4) Unmarried grandchildren who were supported by or lived with the deceased employee at the time of death.

(5) Grandparents who were supported by or lived with the deceased employee at the time of death.

(6) Unmarried brothers and sisters who were supported by or lived with the deceased employee at the time of death.

(d) *Burial allowance.* 14 weeks' wages or \$400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable, the compensation provided in paragraphs (c)(1) through (19) of the special schedule, subject to an aggregate limitation of 400 weeks' compensation. In all other cases, that proportion of the compensation provided for permanent total disability (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period of temporary disability.* Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed \$8,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed \$35.

(j) *Method of payment.* Only compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the

time extent of entitlement is established.

(k) *Exceptions.* The Director may in his or her discretion make exception to these regulations by:

(1) Reapportioning death benefits, for the sake of equity.

(2) Excluding from consideration potential death beneficiaries who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the beneficiary.

**§ 25.26 Japanese seamen.**

(a) The special schedule of compensation established by subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (i) of this section, as of November 1, 1971, to injuries sustained outside the continental United States or Canada by direct-hire Japanese seamen who are neither citizens nor residents of the United States or Canada and who are employed by the Military Sealift Command in Japan.

(b) *Temporary total disability.* Weekly compensation shall be paid at 75 percent of the weekly wage rate.

(c) *Temporary partial disability.* Weekly compensation shall be paid at 75 percent of the weekly loss in wage-earning capacity.

(d) *Permanent total disability.* Compensation shall be paid in a lump sum equivalent to 360 weeks' wages.

(e) *Permanent partial disability.* (1) The provisions of § 25.11 shall apply to the types of permanent partial disability enumerated in paragraphs (c)(1) through (19) of that section, *Provided*, That weekly compensation shall be paid at 75 percent of the weekly wage rate, and *Further provided*, That the number of weeks allowed for specified losses shall be changed as follows:

- (i) Arm lost, 312 weeks.
- (ii) Leg lost, 288 weeks.
- (iii) Hand lost, 244 weeks.
- (iv) Foot lost, 205 weeks.
- (v) Eye lost, 160 weeks.
- (vi) Thumb lost, 75 weeks.
- (vii) First finger lost, 46 weeks.
- (viii) Second finger lost, 30 weeks.
- (ix) Third finger lost, 25 weeks.
- (x) Fourth finger lost, 15 weeks.

(xi) Great toe lost, 38 weeks.

(xii) Toe, other than great toe lost, 16 weeks.

(2) In all other cases, that proportion of the compensation provided for permanent total disability (paragraph (d) of the section) which is equivalent to the degree or percentage of physical impairment caused by the injury.

(f) *Death.* If there are two or more eligible survivors, compensation equivalent to 360 weeks' wages shall be paid to the survivors, share and share alike. If there is only one eligible survivor, compensation equivalent to 300 weeks' wages shall be paid. The following survivors are eligible for death benefits:

(1) Spouse who lived with or was dependent upon the employee.

(2) Unmarried children under 21 who lived with or were dependent upon the employee.

(3) Adult children who were dependent upon the employee by reason of physical or mental disability.

(4) Dependent parents, grandparents and grandchildren.

(g) *Burial allowance.* \$1,000 payable to the eligible survivor(s), regardless of actual expenses. If there are no eligible survivors, actual expenses may be paid or reimbursed, up to \$1,000.

(h) *Method of payment.* Only compensation for temporary disability shall be payable periodically, as entitlement accrues. Compensation for permanent disability and death shall be payable in a lump sum.

(i) *Maxima.* In all cases (temporary disability, permanent disability, and death) the maximum weekly benefit shall be \$130. Also, except in cases of permanent total disability and death, the aggregate maximum compensation payable for any injury shall be \$40,000.

(j) *Prior injury.* In cases where injury or death occurred prior to November 1, 1971, benefits will be paid in accord with regulations previously promulgated.

**§ 25.27 Territory of Guam (nonresident aliens).**

(a) The special schedule of compensation established by subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, to injury or death occurring on or after

July 1, 1971, in the Territory of Guam to nonresident alien employees recruited in foreign countries for employment by the military departments in the Territory of Guam. However, the Director may, in his or her discretion, adopt the benefit features and provisions of local workers' compensation law as provided in subpart A of this part, or substitute the special schedule in subpart B of this part or other modifications of the special schedule in this subpart C, if such adoption or substitution would be to the advantage of the employee or his beneficiary. This schedule shall not apply to any employee who becomes a permanent resident in the Territory of Guam prior to the date of his or her injury or death.

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Beneficiaries of death benefits shall be determined in accordance with the laws or customs of the country of recruitment.

(d) *Burial allowance.* 14 weeks' wages or \$400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable, the compensation provided in paragraphs (1) through (19) of paragraph (c) of §25.11, subject to an aggregate limitation of 400 weeks' com-

pensation. In all other cases, that proportion of the compensation provided for permanent total disability (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period for temporary disability.* Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed \$24,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed \$70.

(j) *Method of payment.* Compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the time extent of entitlement is established.

(k) *Exceptions.* The Director may in his or her discretion make exception to the regulations in this section by:

(1) Reapportioning death benefits for the sake of equity.

(2) Excluding from consideration potential beneficiaries of a deceased employee who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the employee or his beneficiary(ies).

(5 U.S.C. 8137, 8145, 8149)

**SUBCHAPTERS C—E [RESERVED]**  
**SUBCHAPTER F—COMPENSATION FOR INJURY, DISABILITY,  
 DEATH, OR ENEMY DETENTION OF EMPLOYEES OF CON-  
 TRACTORS WITH THE UNITED STATES**

**PART 61—CLAIMS FOR COM-  
 PENSATION UNDER THE WAR  
 HAZARDS COMPENSATION ACT,  
 AS AMENDED**

**Subpart A—General Provisions**

Sec.

- 61.1 Statutory provisions.
- 61.2 Administration of the Act and this chapter.
- 61.3 Purpose and scope of this part.
- 61.4 Definitions and use of terms.

**Subpart B—Reimbursement of Carriers**

- 61.100 General reimbursement provisions.
- 61.101 Filing a request for reimbursement.
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- 61.300 Payment of detention benefits.
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- 61.400 Custody of records relating to claims under the War Hazards Compensation Act.
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- 61.404 Assignments; creditors.

**AUTHORITY:** 1950 Reorg. Plan No. 19, sec. 1, 3 CFR, 1949–1953 Comp., p. 1010, 64 Stat. 1271; 5 U.S.C. 8145, 8149; 42 U.S.C. 1704, 1706; Secretary's Order 7–87, 52 FR 48466; Employment Standards Order 78–1, 43 FR 51469.

**SOURCE:** 53 FR 3679, Feb. 8, 1988, unless otherwise noted.

**Subpart A—General Provisions**

**§ 61.1 Statutory provisions**

(a) The War Hazards Compensation Act, as amended (42 U.S.C. 1701 *et seq.*) provides for reimbursement of workers' compensation benefits paid under the Defense Base Act (42 U.S.C. 1651 *et seq.*), or under other workers' compensation laws as described in § 61.100(a), for injury or death causally related to a war-risk hazard.

(b) If no benefits are payable under the Defense Base Act or other applicable workers' compensation law, compensation is paid to the employee or survivors for the war-risk injury or death of—

(1) Any person subject to workers' compensation coverage under the Defense Base Act;

(2) Any person engaged by the United States under a contract for his or her personal services outside the continental United States;

(3) Any person subject to workers' compensation coverage under the Non-appropriated Fund Instrumentalities Act (5 U.S.C. 8171 *et seq.*);

(4) Any person engaged for personal services outside the continental United States under a contract approved and financed by the United States under the Mutual Security Act of 1954, as



amended (other than title II of chapter II unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the U.S. Government, determines a contract financed under a successor provision of any successor Act should be covered by this subchapter), except that in cases where the United States is not a formal party to contracts approved and financed under the Mutual Security Act of 1954, as amended, the Secretary, upon the recommendation of the head of any department or agency of the United States, may waive the application of the Act; or

(5) Any person engaged for personal services outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces under appropriate authorization by the Secretary of Defense.

(c) The Act also provides for payment of detention benefits to an employee specified in paragraph (a) of this section who—

(1) If found to be missing from his or her place of employment under circumstances supporting a reasonable inference that the absence is due to the belligerent action of a hostile force or person;

(2) Is known to have been taken by a hostile force or person as a prisoner or hostage; or

(3) Is not returned to his or her home or to the place of employment due to the failure of the United States or its contractor to furnish transportation.

#### **§ 61.2 Administration of the Act and this chapter.**

(a) Pursuant to 42 U.S.C. 1706, Secretary of Labor's Order 6-84, (49 FR 32473), and Employment Standards Order 78-1, (43 FR 51469), the responsibility for administration of the Act has been delegated to the Director, Office of Workers' Compensation Programs.

(b) In administering the provisions of the Act, the Director may enter into agreements or cooperative working arrangements with other agencies of the United States or of any State (including the District of Columbia, Puerto Rico, and the Virgin Islands) or political subdivisions thereof, and with other

public agencies and private persons, agencies, or institutions within and outside the United States. The Director may also contract with insurance carriers for the use of their service facilities to process claims filed under the Act

#### **§ 61.3 Purpose and scope of this part.**

(a) This part 61 sets forth the rules applicable to the filing, processing, and payment of claims for reimbursement and workers' compensation benefits under the provisions of the War Hazards Compensation Act, as amended. The provisions of this part are intended to afford guidance and assistance to any person, insurance carrier, self-insured employer, or compensation fund seeking benefits under the Act, as well as to personnel within the Department of Labor who administer the Act.

(b) Subpart A describes the statutory and administrative framework within which claims under the Act are processed, contains a statement of purpose and scope, and defines terms used in the administration of the Act.

(c) Subpart B describes the procedure by which an insurance carrier, self-insured employer, or compensation fund shall file a claim for reimbursement under section 104 of the Act, and describes the procedures for processing a claim for reimbursement and transferring a case for direct payment by the Department of Labor.

(d) Subpart C contains the rules governing the filing and processing of a claim for injury, disability or death benefits under section 101(a) of the Act.

(e) Subpart D contains provisions relating to claims for detention benefits under section 101(b) of the Act.

(f) Subpart E contains miscellaneous provisions concerning disclosure of program information, approval of claims for legal services, and assignment of claim.

#### **§ 61.4 Definitions and use of terms.**

For the purpose of this part—

(a) *The Act* means the War Hazards Compensation Act, 42 U.S.C. 1701 *et seq.*, as amended.

(b) *Office* or *OWCP* means the Office of Workers' Compensation Programs,

Employment Standards Administration, United States Department of Labor.

(c) *Contractor with the United States* includes any contractor, subcontractor or subordinate subcontractor.

(d) *Carrier* means any payer of benefits for which reimbursement is requested under the Act, and includes insurance carriers, self-insured employers and compensation funds.

(e) *War-risk hazard* means any hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by the Act is serving; from—

(1) The discharge of any missile (including liquids and gas) or the use of any weapon, explosive, or other noxious thing by a hostile force or person or in combating an attack or an imagined attack by a hostile force or person;

(2) Action of a hostile force or person, including rebellion or insurrection against the United States or any of its allies;

(3) The discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or person (except with respect to employees of a manufacturer, processor, or transporter of munitions during the manufacture, processing, or transporting of munitions, or while stored on the premises of the manufacturer, processor, or transporter);

(4) The collision of vessels in convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(5) The operation of vessels or aircraft in a zone of hostilities or engaged in war activities.

(f) *Hostile force or person* means any nation, any subject of a foreign nation, or any other person serving a foreign nation—

(1) Engaged in a war against the United States or any of its allies;

(2) Engaged in armed conflict, whether or not war has been declared,

against the United States or any of its allies; or

(3) Engaged in a war or armed conflict between military forces of any origin in any country in which a person covered by the Act is serving.

(g) *Allies* means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance.

(h) *War activities* includes activities directly relating to military operations.

(i) *Continental United States* means the States and the District of Columbia.

(j) *Injury* means injury resulting from a war-risk hazard, as defined in this section, whether or not such injury occurred in the course of the person's employment, and includes any disease proximately resulting from a war-risk hazard.

(k) *Death* means death resulting from an injury, as defined in this section.

(l) The terms *compensation, physician, and medical, surgical, and hospital services and supplies* when used in subparts D and E are construed and applied as defined in the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*).

(m) The terms *disability, wages, child, grandchild, brother, sister, parent, widow, widower, student, adoption or adopted* are construed and applied as defined in the Longshore and Harbor Workers' Compensation Act, as amended (35 U.S.C. 901 *et seq.*).

## Subpart B—Reimbursement of Carriers

### § 61.100 General reimbursement provisions.

(a) The Office shall reimburse any carrier that pays benefits under the Defense Base Act or other applicable workers' compensation law due to the injury, disability or death of any person specified in § 61.1(a), if the injury or death for which the benefits are paid arose from a war-risk hazard. The amount to be reimbursed includes disability and death payments, funeral and burial expenses, medical expenses, and the reasonable and necessary

claims expense incurred in processing the request.

(b) The Office shall not provide reimbursement in any case in which an additional premium for war-risk hazard was charged, or in which the carrier has been reimbursed, paid, or compensated for the loss for which reimbursement is requested.

(c) Reimbursement under this section with respect to benefits shall be limited to the amounts which will discharge the liability of the carrier under the applicable workers' compensation law.

**§ 61.101 Filing a request for reimbursement.**

(a) A carrier or employer may file a request for reimbursement. The request shall be submitted to the U.S. Department of Labor, Office of Workers' Compensation Programs, Branch of Special Claims, P.O. Box 37117, Washington, DC 20013-7117;

(b) Each request for reimbursement shall include documentation itemizing the payments for which reimbursement is claimed. The documentation shall be sufficient to establish the purpose of the payment, the name of the payee, the date(s) for which payment was made, and the amount of the payment. Copies of any medical reports and bills related to medical examination or treatment for which reimbursement is claimed shall also be submitted. If the carrier cannot provide copies of the payment drafts or receipts, the Office may accept a certified listing of payments which includes payee name, description of services rendered, date of services rendered, amount paid, date paid check or draft number, and signature of certifier.

(c) When filing an initial request for reimbursement under the Act, the carrier shall submit copies of all available documents related to the workers' compensation case, including—

- (1) Notice and claim forms;
- (2) Statements of the employee or employer;
- (3) Medical reports;
- (4) Compensation orders; and
- (5) Proof of liability (e.g., insurance policy or other documentation).

**§ 61.102 Disposition of reimbursement requests.**

(a) If the Office finds that insufficient or inadequate information has been submitted with the claim, the carrier shall be asked to submit further information. Failure to supply the requested information may result in disallowance of items not adequately supported as properly reimbursable.

(b) The Office shall not withhold payment of an approved part of a reimbursement request because of denial of another part of the reimbursement request.

(c) The Office shall regard awards, decisions and approved settlement agreements under the Defense Base Act or other applicable workers' compensation law, that have become final, as establishing prima facie, the right of the beneficiary to the payment awarded or provided for.

(d) The Office shall advise the carrier of the amount approved for reimbursement. If the reimbursement request has been denied in whole or in part, the Office shall provide the carrier an explanation of the action taken and the reasons for the action. A carrier within the United States may file objections with the Associate Director for Federal Employees' Compensation to the disallowance or reduction of a claim within 60 days of the Office's decision. A carrier outside the United States has six months within which to file objections with the Associate Director. The Office may consider objections filed beyond the time limits under unusual circumstances or when reasonable cause has been shown for the delay. A determination by the Office is final.

(e) In determining whether a claim is reimbursable, the Office shall hold the carrier to the same degree of care and prudence as any individual or corporation in the protection of its interests or the handling of its affairs would be expected to exercise under similar circumstances. A part or an item of a claim may be disapproved if the Office finds that the carrier—

- (1) Failed to take advantage of any right accruing by assignment or subrogation (except against the United States, directly or indirectly, its employees, or members of its armed forces) due to the liability of a third

party, unless the financial condition of the third party or the facts and circumstances surrounding the liability justify the failure;

(2) Failed to take reasonable measures to contest, reduce, or terminate its liability by appropriate available procedure under workers' compensation law or otherwise; or

(3) Failed to make reasonable and adequate investigation or injury as to the right of any person to any benefit or payment; or

(4) Failed to avoid augmentation of liability by reason of delay in recognizing or discharging a compensation claimant's right to benefits.

**§ 61.103 Examination of records of carrier.**

Whenever it is deemed necessary, the Office may request submission of case records or may inspect the records and accounts of a carrier for the purpose of verifying any allegation, fact or payment stated in the claim. The carrier shall furnish the records and permit or authorize their inspection as requested. The right of inspection shall also relate to records and data necessary for the determination of whether any premium or other charge was made with respect to the reimbursement claimed.

**§ 61.104 Reimbursement of claims expense.**

(a) A carrier may claim reimbursement for reasonable and necessary claims expense incurred in connection with a case for which reimbursement is claimed under the Act. Reimbursement may be claimed for allocated and unallocated claims expense.

(b) The term "allocated claims expense" includes payments made for reasonable attorneys' fees, court and litigation costs, expenses of witnesses and expert testimony, examinations, autopsies and other items of expense that were reasonably incurred in determining liability under the Defense Base Act or other workers' compensation law. Allocated claims expense must be itemized and documented as described in § 61.101.

(c) The term "unallocated claims expense" means costs that are incurred in processing a claim, but cannot be specifically itemized or documented. A

carrier may receive reimbursement of unallocated claims expense in an amount of to 15% of the sum of the reimbursable payments made under the Defense Base Act or other workers' compensation law. If this method of computing unallocated claims expense would not result in reimbursement of reasonable and necessary claims expense, the Office may, in its discretion, determine an amount that fairly represents the expenses incurred.

(d) The Office shall not consider as a claims expense any general administrative costs, general office maintenance costs, rent, insurance, taxes, or other similar general expenses. Nor shall expenses incurred in establishing or documenting entitlement to reimbursement under the Act be considered.

**§ 61.105 Direct payment of benefits.**

(a) The Office may pay benefits, as they accrue, directly to any entitled beneficiary in lieu of reimbursement of a carrier.

(b) The Office will not accept a case for direct payment until the right of the person or persons entitled to benefits has been established and the Office finds that the carrier would be entitled to reimbursement for continuing benefits.

(c) The Office will not accept a case for direct payment until the rate of compensation or benefit and the period of payment have become relatively fixed and known. The Office may accept a case for direct payment before this condition has been satisfied, if the Office determines that direct payment is advisable due to the circumstances in that particular case.

(d) In cases transferred to the Office for direct payment, medical care for the effects of a war-risk injury may be furnished in a manner consistent with the regulations governing the furnishing of medical care under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101, *et seq.*).

(e) The transfer of a case to the Office for direct payment does not affect the hearing or adjudicatory rights of a beneficiary or carrier as established under the Defense Base Act or other applicable workers' compensation law.

(f) The Office may retransfer any case to a carrier either for the purpose

of completion of adjudicatory processes or for continuation of payment of benefits.

### Subpart C—Compensation for Injury, Disability or Death

#### § 61.200 Entitlement to benefits.

(a) Compensation under section 101(a) of the Act is payable for injury or death due to a war-risk hazard of an employee listed in § 61.1(a), whether or not the person was engaged in the course of his or her employment at the time of the injury.

(b) Compensation under this subpart is paid under the provisions of the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*), except that the determination of beneficiaries and the computation of compensation are made in accordance with sections 6, 8, 9, and 10 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 *et seq.*).

(c) The Office may not approve a claim for compensation if any of the following conditions are met:

(1) The employee resides at or in the vicinity of the place of employment, does not live there solely due to the exigencies of the employment, and is injured outside the course of the employment.

(2) The claim is filed due to the injury or death of a prisoner of war detained or utilized by the United States.

(3) The person seeking benefits recovers or receives workers' compensation benefits from any other source for the same injury or death.

(4) The person seeking benefits is a national of a foreign country and is entitled to compensation benefits from that or any other foreign country on account of the same injury or death.

(5) The employee is convicted in a court of competent jurisdiction of any subversive act against the United States or any of its allies.

#### § 61.201 Filing of notice and claim.

An employee or his or her survivors may file a claim under section 101(a) of the Act only after a determination has been made that no benefits are payable under the Defense Base Act administered by the Office's Division of Longshore and Harbor Workers' Com-

pensation, Notice and claim may be filed on standard Longshore or Federal Employees' Compensation Act forms. The claimant shall submit notice and claim, along with any supporting documentation, to the U.S. Department of Labor, Office of Workers' Compensation Programs, Branch of Special Claims, P.O. Box 37117, Washington, DC 20013-7117.

#### § 61.202 Time limitations for filing notice and claim.

The time limitation provisions found in 5 U.S.C. 8119 apply to the filing of claims under section 101(a) of the War Hazards Compensation Act. The Office may waive the time limitations if it finds that circumstances beyond the claimant's control prevented the filing of a timely claim.

#### § 61.203 Limitations on and deductions from benefits.

(a) Compensation payable for injury, disability or death may not exceed the maximum limitations specified in section 6(b) of the Longshore and Harbor Workers' Compensation Act, as amended.

(b) In determining benefits for disability or death, the Office shall not apply the minimum limits found in sections 6(b) and 9(e) of the Longshore and Harbor Workers' Compensation Act.

(c) Compensation for death or permanent disability payable to persons who are not citizens of the United States and who are not residents of the United States or Canada is in the same amount as provided for residents, except that dependents in a foreign country are limited to the employee's spouse and children, or if there be no spouse or children, to the employee's father or mother whom the employee supported, either wholly or in part, for the period of one year immediately prior to the date of the injury. The Office may discharge its liability for all future payments of compensation to a noncitizen/nonresident by paying a lump sum representing one-half the commuted value of all future compensation as determined by the Office.

(d) If any employee or beneficiary receives or claims wages, payments in lieu of wages, or insurance benefits for

disability or loss of life (other than workers' compensation benefits), and the cost of these payments is provided in whole or in part by the United States, the Office shall credit the amount of the benefits against any payments to which the person is entitled under the Act. The Office shall apply credit only where the wages, payments, or benefits received are items for which the contractor is entitled to reimbursement from the United States, or where they are otherwise reimbursable by the United States.

(e) If an employee who is receiving workers' compensation benefits on account of a prior accident or disease sustains an injury compensable under the Act, the employee is not entitled to any benefits under the Act during the period covered by other workers' compensation benefits unless the injury from a war-risk hazard increases the employee's disability. If the war-risk injury increases the disability, compensation under the Act is payable only for the amount of the increase in disability. This provision is applicable only to disability resulting jointly from two unrelated causes, namely, (1) prior industrial accident or disease, and (2) injury from a war-risk hazard.

(f) Compensation for disability under this subchapter, with the exception of allowances for scheduled losses of members or functions of the body, may not be paid for the same period of time during which benefits for detention under this subchapter are paid or accrued.

**§ 61.204 Furnishing of medical treatment.**

All medical services, appliances, drugs and supplies which in the opinion of the Office are necessary for the treatment of an injury coming within the purview of section 101(a) of the Act shall be furnished to the same extent, and wherever practicable in the same manner and under the same regulations, as are prescribed for the furnishing of medical treatment under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*).

**§ 61.205 Burial expense.**

(a) When the death of a person listed in § 61.1(a) results from an injury

caused by a war-risk hazard, the Office shall pay reasonable burial expenses up to the amount specified in section 9 of the Longshore and Harbor Workers' Compensation Act. If any part of the burial expense has been paid by any other agency of the United States, or by any person under obligation to discharge burial expenses, the amount so paid shall be deducted from the burial expense payable by the Office. Payment will be made directly (1) to the undertaker, (2) to the estate of the deceased if the estate is obligated to make payment, or (3) to any person who has paid such burial expenses and is entitled to such reimbursement.

(b) If the employee's home is within the United States and death occurs away from the employee's home or outside the United States, the Office may pay an additional sum for transporting the remains to the home.

**§ 61.206 Reports by employees and dependents.**

The Office may require a claimant to submit reports of facts materially affecting the claimant's entitlement to compensation under the Act. These may include reports of recurrence or termination of disability, of employment and earnings, or of a change in the marital or dependency status of a beneficiary.

**Subpart D—Detention Benefits**

**§ 61.300 Payment of detention benefits.**

(a) The Office shall pay detention benefits to any person listed in § 61.1(a) who is detained by a hostile force or person, or who is not returned to his or her home or to the place of employment by reason of the failure of the United States or its contractor to furnish transportation. Benefits are payable for periods of absence on and subsequent to January 1, 1942, regardless of whether the employee was actually engaged in the course of his or her employment at the time of capture or disappearance.

(b) For the purposes of paying benefits for detention, the employee is considered as totally disabled until the time that the employee is returned to his or her home, to the place of employment, or to the jurisdiction of the

United States. The Office shall credit the compensation benefits to the employee's account, to be paid to the employee for the period of the absence or until the employee's death is in fact established or can be legally presumed to have occurred. A part of the compensation accruing to the employee may be disbursed during the period of absence to the employee's dependents.

(c) During the period of absence of any employee detained by a hostile force or person, detention benefits shall be credited to the employee's account at one hundred percent of his or her average weekly wages. The average weekly wages may not exceed the average weekly wages paid to civilian employees of the United States performing the same or most similar employment in that geographic area. If there are eligible dependents, the Office may pay to these dependents seventy percent of the credited benefits.

(d) The Office may not pay detention benefits under any of the following conditions:

(1) The employee resides at or in the vicinity of the place of employment, does not live there solely due to the exigencies of the employment, and is detained under circumstances outside the course of the employment.

(2) The person detained is a prisoner of war detained or utilized by the United States.

(3) Workers' compensation benefits from any other source or other payments from the United States are paid for the same period of absence or detention.

(4) The person seeking detention benefits is a national of a foreign country and is entitled to compensation benefits from that or any other foreign country on account of the same absence or detention.

(5) The employee has been convicted in a court of competent jurisdiction of any subversive act against the United States or any of its allies.

#### **§ 61.301 Filing a claim for detention benefits.**

(a) A claim for detention benefits shall contain the following information: Name, address, and occupation of the missing employee; name, address and relation to the employee of any de-

pendent making claim; name and address of the employer; contract number under which employed; date, place and circumstances of capture or detention; date, place and circumstances of release (if applicable). The employer shall provide information about the circumstances of the detention and the employee's payrate at the time of capture. Dependents making claim for detention benefits may be required to submit all evidence available to them concerning the employment status of the missing person and the circumstances surrounding his or her absence.

(b) A claim filed by a dependent or by the employee upon his or her release should be sent with any supporting documentation to the U.S. Department of Labor, Office of Workers' Compensation Programs, Branch of Special Claims, P.O. Box 37117, Washington, DC 20013-7117.

#### **§ 61.302 Time limitations for filing a claim for detention benefits.**

The time limitation provisions found in the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*) apply to the filing of claims for detention benefits. The Office may waive the time limitations if it finds that circumstances beyond the claimant's control prevented the filing of a timely claim.

#### **§ 61.303 Determination of detention status.**

A determination that an employee has been detained by a hostile force or person may be made on the basis that the employee has disappeared under circumstances that make detention appear probable. In making the determination, the Office will consider the information and the conclusion of the Department or agency of the United States having knowledge of the circumstances surrounding the absence of the employee as prima facie evidence of the employee's status. The presumptive status of total disability of the missing person shall continue during the period of the absence, or until death is in fact established or can be legally presumed to have occurred.

**§ 61.304 Limitations on and deductions from detention benefits.**

(a) In determining benefits for detention, the Office shall not apply the minimum limits found in sections 6(b) and 9(e) of the Longshore and Harbor Workers' Compensation Act.

(b) If any employee or dependent receives or claims wages, payments in lieu of wages, or insurance benefits for the period of detention, and the cost of the wages, payments or benefits is provided in whole or in part by the United States, the Office shall credit the amount of the benefits against any detention payments to which the person is entitled under the Act. The Office shall apply credit only where the wages, payments, or benefits received are items for which the contractor is entitled to reimbursement from the United States, or where they are otherwise reimbursable by the United States.

**§ 61.305 Responsibilities of dependents receiving detention benefits.**

A dependent having knowledge of a change of status of a missing employee shall promptly inform the Office of the change. The Office must be advised immediately by the dependent if the employee is returned home or to the place of his or her employment, or is able to be returned to the jurisdiction of the United States.

**§ 61.306 Transportation of persons released from detention and return of employees.**

(a) The Office may furnish the cost of transporting an employee from the point of the employee's release from detention to his or her home, the place of employment, or other place within the jurisdiction of the United States. The Office shall not pay for transportation if the employee is furnished the transportation under any agreement with his or her employer or under any other provision of law.

(b) The Office may furnish the cost of transportation under circumstances not involving detention, if the furnishing of transportation is an obligation of the United States or its contractor, and the United States or its contractor fails to return the employee to his or

her home or to the place of employment.

**§ 61.307 Transportation of recovered bodies of missing persons.**

If an employee dies while in detention and the body is later recovered, the Office may provide the cost of transporting the body to the home of the deceased or to any place designated by the employee's next of kin, near relative, or legal representative.

**Subpart E—Miscellaneous Provisions**

**§ 61.400 Custody of records relating to claims under the War Hazards Compensation Act.**

All records, medical and other reports, statements of witnesses and other papers filed with the Office with respect to the disability, death, or detention of any person coming within the purview of the Act, are the official records of the Office and are not records of the agency, establishment, Government department, employer, or individual making or having the care or use of such records.

**§ 61.401 Confidentiality of records.**

Records of the Office pertaining to injury, death, or detention are confidential, and are exempt from disclosure to the public under section 552(b)(6) of title 5, U.S. Code. No official or employee of the United States who has investigated or secured statements from witnesses and others pertaining to any case within the purview of the Act, or any person having the care or use of such records, shall disclose information from or pertaining to such records to any person, except in accordance with applicable regulations (see 29 CFR part 70a).

**§ 61.402 Protection, release, inspection and copying of records.**

The protection, release, inspection and copying of the records shall be accomplished in accordance with the rules, guidelines and provisions contained in 29 CFR parts 70 and 70a and the annual notice of systems of records and routine uses as published in the FEDERAL REGISTER.



**§ 61.403 Approval of claims for legal and other services.**

(a) No claim for legal services or for any other services rendered in respect to a claim or award for compensation under the Act to or on account of any person shall be valid unless approved by the Office. Any such claim approved by the Office shall, in the manner and to the extent fixed by the Office, be paid out of the compensation payable to the claimant.

(b) The Office shall not recognize a contract for a stipulated fee or for a fee on a contingent basis. No fee for services shall be approved except upon application supported by a sufficient statement of the extent and character of the necessary work done on behalf of the claimant. Except where the claimant was advised that the representation would be rendered on a gratuitous

basis, the fee approved shall be reasonably commensurate with the actual necessary work performed by the representative, and with due regard to the capacity in which the representative appeared, the amount of compensation involved, and the circumstances of the claimant.

**§ 61.404 Assignments; creditors.**

The right of any person to benefits under the Act is not transferable or assignable at law or in equity except to the United States, and none of the moneys paid or payable (except money paid as reimbursement for funeral expenses), or rights existing under the Act are subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

## SUBCHAPTER G—COMPENSATION FOR INJURY, DISABILITY OR DEATH OF CIVILIAN AMERICAN CITIZENS INCURRED WHILE DETAINED BY OR IN HIDING FROM THE IMPERIAL JAPANESE GOVERNMENT

### PART 71—GENERAL PROVISIONS

Sec.

- 71.1 General administrative provisions.
- 71.2 Computation of benefits.
- 71.3 Deductions from benefits.
- 71.4 Limitation upon benefits.
- 71.5 Payment of benefits.
- 71.6 Notice of injury or death.
- 71.7 Claim filing, processing, adjudication and time limits.

AUTHORITY: Sec. 32, 39 Stat. 749, as amended, sec. 106, 56 Stat. 1033, as amended, sec. 5, 62 Stat. 1242, as amended; 5 U.S.C. 8145, 8149, 42 U.S.C. 1706, 50 U.S.C. App., 2004.

SOURCE: 16 FR 2933, Apr. 4, 1951, unless otherwise noted.

#### **§ 71.1 General administrative provisions.**

(a) Section 5(f) of the War Claims Act of 1948 (act of July 3, 1948; Pub. L. 896, 80th Cong., 62 Stat. 1240) makes provision for the payment of benefits with respect to the injury, disability or death resulting from injury of any civilian American citizen occurring while he was held by or in hiding from the Imperial Japanese Government to the same extent as if such civilian American citizen were an employee within the purview of the act of December 2, 1942 (Pub. L. 784, 77th Cong., 56 Stat. 1028, 42 U.S.C. 1701, et seq.). Under section 5(f) of the said War Claims Act of 1948, the rights of individuals to benefits payable under this subchapter shall accrue from and after December 7, 1941, subject, however, to all of the provisions of said act and the regulations in this subchapter.

(b) The regulations in part 61 of subchapter F of this chapter governing the administration of the benefits provided under titles I and II of the said act of December 2, 1942, as amended, shall, insofar as they are applicable and are not inconsistent with any of the provisions of this subchapter, govern the administration of the benefits payable under this subchapter. Provisions of such regulations relating to benefits for detention by the enemy, reimbursement to

an employer or insurance carrier, and limitations on benefits in cases where workmen's compensation is payable are not applicable to the benefits provided in this subchapter nor are they within the purview of this subchapter. The provisions of sections 101(b), 104 and 105 of such act of December 2, 1942, and the various provisions of part 61 of this chapter relating to such provisions, accordingly, are not applicable to the payment of benefits under this subchapter.

(c) All rights or benefits under this subchapter which are determinable with reference to other provisions of law other than the said War Claims Act of 1948, shall be determined with reference to such provisions as they existed and were in force on January 3, 1948.

(d) As used in this subchapter:

(1) The term "Bureau" means the Bureau of Employees' Compensation, U.S. Department of Labor.

(2) The term "civilian American citizen" means any person who, being then a citizen of the United States, was captured by the Imperial Japanese Government on or after December 7, 1941, at Midway, Guam, Wake Island, the Philippine Islands, or any Territory or possession of the United States attacked or invaded by such government or while in transit to or from any such place, or who went into hiding at any such place in order to avoid capture or internment by such government; except (i) a person who at any time voluntarily gave aid to, collaborated with, or in any manner served such government, or (ii) a person who at the time of his capture or entrance into hiding was within the purview of the Federal Employees' Compensation Act of September 7, 1918, as amended and extended, or the said act of December 2, 1942, as amended, or the Missing Persons Act of March 7, 1942 (56 Stat. 143), as amended, or who was a regularly appointed, enrolled, enlisted, or inducted member of any military or naval force.

(3) The terms "held by the Imperial Japanese Government" or "captured by the Imperial Japanese Government" mean a holding of such person as a prisoner, internee, hostage or in any other capacity.

(4) The terms "compensation", "physician" and "medical, surgical and hospital services and supplies" shall be construed and applied as defined in the Federal Employees' Compensation Act of September 7, 1916, as amended.

(5) The term "benefit" is construed as synonymous with the term "compensation".

(6) The terms "disability", "wages", "child", "grandchild", "brother", "sister", "parent", "widow", "widower", "adoption" or "adopted" shall be construed and applied as defined in the Longshoremen's and Harbor Workers' Compensation Act, as amended.

#### **§ 71.2 Computation of benefits.**

(a) For the purpose of determining the benefits under this subchapter, the average weekly wage of any such civilian American citizen, whether employed, self-employed, or not employed, shall be deemed to have been \$37.50. The provisions of this subchapter are applicable and benefits are payable whether or not such civilian American citizen was employed. Monthly compensation in cases involving partial disability shall be determined by the percentage which the degree of partial disability bears to total disability, and shall not be determined with respect to the extent of loss of wage-earning capacity.

(b) Notwithstanding any of the provisions of part 61 of this chapter, total maximum aggregate compensation for disability payable under this subchapter is limited to \$7,500 in case of injury and \$7,500 in case of death, such sum being exclusive of medical costs and funeral and burial expenses.

#### **§ 71.3 Deductions from benefits.**

If a civilian American citizen or his dependents receives or has received from the United States any payments on account of the same injury or death, or from his employer in the form of wages or payments in lieu of wages, or in any form of support or compensation (including workmen's compensation) in

respect to the same objects, the benefits under this subchapter shall be diminished in the case of an injured person by the amount of payments such injured person received on account of the same injury or disability, or in the case of dependents, by the amount of payments such dependents of the deceased civilian American citizen received on account of the same death, as the case may be.

#### **§ 71.4 Limitation upon benefits.**

No person, except a widow or a child, shall be entitled to benefits under this subchapter for disability with respect to himself and to death benefits on account of the death of another.

#### **§ 71.5 Payment of benefits.**

(a) Benefits under this subchapter payable for disability or death shall be paid only to the person entitled thereto, or to his legal or natural guardian if he has one, and shall not upon death of the person so entitled survive for the benefit of his estate or any other person.

(b) The benefit of a minor or an incompetent person who has no natural or legal guardian may, in the discretion of the Bureau be paid in whole or in such part as the Bureau may determine, for and on behalf of such minor or incompetent directly to the person or institution caring for, supporting or having custody of such minor or incompetent.

(c) In any case in which benefits are payable under this subchapter to any person who is prevented from accepting such benefits by the rules, regulations or customs of the church or the religious order or organization of which he is a member, such benefits will be paid, upon the request of such person, to such church or to such religious order or organization.

#### **§ 71.6 Notice of injury or death.**

Notwithstanding any of the provisions in part 61 of this chapter, no notice or report of injury or death shall be required for claims filed under this subchapter.

**§ 71.7 Claim filing, processing, adjudication and time limits.**

(a) Claims for injury, disability or death benefits payable under section 5(f) of the said War Claims Act of 1948, originating in the United States or in its Territories or possessions, shall be filed by mailing to the Bureau of Employees' Compensation, United States Department of Labor, Washington, DC 20211. All claims originating in the

Philippine Islands may be filed by mailing to the Bureau of Employees' Compensation, United States Department of Labor, Manila, P.I. All claims will be finally processed and adjudicated by the Bureau at its principal office in Washington, DC.

(b) The limitation provisions for the filing of claims for disability or death benefits, as prescribed by applicable provisions of statute, shall not begin to run earlier than July 3, 1948.